

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES-A, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 31/JP/2018
निर्धारण वर्ष/Assessment Year :2009-10

M/s Jaipur Texweaving Park Ltd., 37-38, Yarnwala Chambers, Ramganj Bazar, Jaipur	बनाम Vs.	Income Tax Officer, Ward-7 (2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ6286B		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mukesh Khandelwal (CA)
राजस्व की ओर से/ Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख/ Date of Hearing : 19/09/2018
उदघोषणा की तारीख/Date of Pronouncement: 13/12/2018

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jodhpur dated 19.09.2017 for A.Y. 2009-10 wherein the assessee has taken following grounds of appeal.

"1. That the Id. CIT(A) has erred in law in sustaining the action of the Id. AO in taxing a sum of Rs. 17,85,356/- earned by the appellant company as interest on FDR during pre operation period by ignoring the documents and valid explanations submitted before her."

2. Briefly stated, the facts of the case are that the assessee company is engaged in the business of developing Textile Park near Kishanganj and for the purposes, land has been allotted by RIICO and a grant of Rs. 23.23 crores has been sanctioned by the Ministry of Textile, Government of India. The assessee filed its return of income u/s 139(1) disclosing total income at Nil, subsequently notice u/s 148 of the Act was issued on 11.02.2013 as the AO noticed that the assessee has not offered interest income earned on FDR during pre-operation period for tax purposes and had reduced its pre operative expenses to that extent.

3. During the course of reassessment proceedings, the Assessing Officer observed that development activities were in progress and the assessee has shown capital work in progress and pre operative expenses. Further, the AO observed that the assessee has earned interest of Rs. 17,57,653/- as per Form 26AS during the year, which was received on temporary deposits with bank as FDRs and thereafter a show cause notice was issued to the assessee as to why the interest income should not be assessed as "income from other sources" in view of the decision of the Hon'ble Supreme Court in case of Tuticorin Alkali Chemicals Fertilizers Ltd reported in 227 ITR 172. The reply of the assessee was considered but not found acceptable and the Assessing Officer recorded his finding as under:-

"For applying particular judicial decision ratio decidendi of decision is relevant. The Escrow account is just an arrangement whereby an independent trusted third party i.e. Bank in this case, receives and disburses money for the transacting parties, with the timing of such disbursement by the third party. In the assessee instant case the

interest was earned on FDRs with Banks which were at Rs. 17,85,356/- as at 31/03/2009. The interest earned on surplus funds during pre operation period is a fact which is similar with the Tuticorin Alkali Chemicals Ltd. The Hon'ble Apex Court in this case held that where surplus funds have been invested in temporary deposit, the interest income so accruing is liable for tax as income from other sources. The Hon'ble Apex Court in the case of Bokaro Steel 236 ITR 315(SC) also upheld the same view and held that interest income earned on advances which are intrinsically connected with business is assessable as business income.

The documents filed by the assessee indicate that the interest earned on the fixed deposits made against the grant received from Govt. Of India are to be recovered /adjusted from the final grant and that the income earned from interest will be reduced from the total grant thus reducing the grant of assessee but the same will not effect the interest income earned by the assessee which is taxable in view of decision in the case of Tuticorin Alkali Chemicals Ltd. The interest income which arises on investment of surplus fund is liable to tax as income from other sources. The ratio of these cases is squarely applicable in the instant case. Hence, interest income on fixed deposit amounting to Rs. 17,85,356/- is treated as income from other sources.”

Thereafter, the assessment was completed u/s 143(3)/147 of the Act on 10.03.2014 determining the total income at Rs. 17,85,360/- wherein interest on FDR was brought to tax under the head “income from other sources”.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the action of the AO and the relevant findings are contained at para 5.2 which are reproduced as under:-

"5.2 I have considered the facts of the case, assessment order, appellant's submissions and case-laws relied on by the AO as well as the appellant. The AO noted that the appellant company had not offered income earned by it as interest on FDR during pre operation period for tax purposes and had only reduced its pre operative expenses by this amount. The AO, not being satisfied with the assessee's submissions, taxed such interest received at Rs. 17,85,360/- as "income from other sources". While doing so, the AO relied on the decision of the Apex Court in the cases of Tuticorin Alkali Chemicals Ltd.(supra) and Bokaro Steel 236 ITR 315 (SC). The appellant has contested this action of the AO by stating that this arrangement was made by the assessee company to keep security of the money of grant on one hand and to maintain liquidity on the other, the assessee company was duty bound to utilize the amount of grant as per the scheme of the Central Government and could not have deviated so as to avoid any sort of penal action. By placing reliance upon various judicial decisions, the appellant requested that interest income may be allowed to be set off from Pre Operation Expenses and should not be taxed separately as held by the AO. Considering the facts and circumstances of the case, I am not inclined to agree with the appellant's contentions. It may be noted that there is no dispute on the fact that such interest income of Rs. 17,85,360/- was earned by the

appellant from the available funds received by way of subsidy from Govt of India. The A.O.'s case is that subsidy amount was kept by way of FDRs in the bank on which such interest income was earned and that making of FDRs was not at all due to any compelling circumstances which may have been imposed by the Govt. of India and that in such circumstances such interest income is to be taxed as income from other sources in the light of decision of the Hon'ble Apex Court's decision in the case of Tuticorin Alkali Chemicals Ltd. In this connection, it may be mentioned that as per settled law the interest income from FDRs before commencement of business will always be taxed as income from other sources except in the circumstances when such FDRs were necessitated due to business needs or business expediency of the appellant. It can form part of the capital cost, if it is established conclusively that making of such bank FDRs was essentially required for execution of the ongoing project of the appellant. There are plethora of decisions wherein it has been laid down that interest on fixed deposits and other deposits before the commencement of the business will always be taxed as "income from other sources."

5. Further, the Id. CIT(A) referred to the decision of the Hon'ble Supreme Court in case of Tuticorin Alkali Chemicals Fertilizers Ltd (supra), the decision of Hon'ble Rajasthan High Court in case of CIT vs. Rajasthan Land Development Corporation [1995] 211 ITR 597 (RAJ.), and decision of Delhi High Court in case of CIT vs. Modi Rubber Ltd. [1994] 73 Taxman 337 (Delhi) and relying on the same confirmed the action of AO in taxing interest on FDR as income from other sources.

6. Against the said finding of the Id. CIT(A), the assessee is in appeal before us. During the course of hearing, the Id. AR submitted as under:

“1. As per policy of the Govt., the interest earned on surplus funds out of subsidy during pre operation period is to be refunded to the government or to be adjusted in the last installment of grant. (APB 5) is a letter issued by IL & FS (project implementation agency appointed by the Central Government and who played a major role in framing the scheme of the Govt. for integrated textile parks) vide which the said agency had forwarded minutes of Project approval committee held on 21st March, 2007 wherein decision was taken that interest accrued on the grants released would be accounted for at the time of release of final installment of the grant. On APB 7 such decision of the project approval committee is appearing at point no.(d). It clearly mentions that interest on grants released shall be accounted for at the time of release of final installment. Meaning thereby that the Govt. would deduct the interest earned out of the final installment of grant and hence such interest partakes the character of capital receipt. Neither the Id. AO nor the Id. CIT(A) gave proper attention on this page. Reliance is placed on Gujarat Municipal Finance Board v.s DCIT (Assessment) (221 ITR 317) (Guj): In this case, the Board earned some income in the form of interest by utilizing its surplus amount. However as per stipulations of the Govt. for treating the interest income at par with grant in aid, the interest so earned was held not taxable and was capital receipt only.

2. APB 11 is another communication of IL & FS addressed to the appellant wherein the real spirit of the government is clarified that interest

earned on grants released pending utilization shall be adjusted out of final instalment of the grant. Again no attention was given by the Id. AO or the Id. CIT (A) on this paper.

3. APB 12 is a notification issued by Ministry of Textiles, Govt. of India wherein again the spirit of the government stands clarified that the interest earned on released grants was to be surrendered/ adjusted to the government. Again this document was not properly appreciated by the Id. AO or the Id. CIT (A).

4. APB 13 to 22 is a printout of the Guidelines of the Scheme for integrated textile parks obtained from the official website of the Ministry of Textiles, GOI wherein at page 17 and 18 the clause about surrendering/ adjusting the interest so earned to the GOI while releasing subsequent installments is duly mentioned. This clarified the whole position about the intention of the government. Hence the interest on the grants released is of capital in nature and the treatment done by the appellant is absolutely justified.

5. The Id. AO has stated on page 5 that such surrendering/ adjusting of the interest amount out of final instalment shall not affect the taxability of interest income in view of judgment of the Hon.ble SC in the case of Tuticorin Alkali Chemicals Ltd. It is beyond understanding as to on what basis the Id. AO has mentioned like this. The reasoning so given by the Id. AO is without understanding the real nature of such interest income.

6. The Id. CIT (A) has not stated anything about above contention of the appellant and she has not even dealt with this particular aspect of the claim of the appellant.

7. The subsidy was sanctioned by the Ministry of Textiles, Govt. of India for meeting out land development cost, common infrastructure and building for common facilities etc. as stipulated in the scheme for integrated textiles park. The interest earned on such funds during pre operation period are required to be held as capital receipt. Reliance is placed on Adani Power Ltd. v/s ACIT — 1, Ahmedabad (155 ITD 239) (Ahmedabad ITAT): The Hon'ble Court in this case examined the purpose for which funds were received by it. If the funds were obtained for the purpose of acquiring any capital asset the interest earned on temporary use of such funds is only a capital receipt. It was observed that since funds were raised for specific purpose of setting up of power plants and hence interest earned on such funds during pre operation period is only a capital receipt. The facts of this case are similar to that of the present appellant. Here also the subsidy was granted for meeting out land development cost, common infrastructure, buildings for common facilities etc. and hence the income earned for temporary parking of funds is clearly of capital in nature. Further reliance is also placed on NTPC Sail Power Co. P Ltd. v/s CIT (210 taxman 0358) (Delhi): In this case the issue was taxability of interest earned on temporary parking of funds in deposits which were taken by it for setting up new power plant and the Hon'ble Court held that interest so earned is inextricably linked with setting up of plant and hence has to be treated as capital receipt going to reduce the capital cost of such setting up.

8. The subsidy was required to be utilized only for the purpose for which it was sanctioned and within the time frame also.

9. Therefore it was the responsibility of the management of the appellant company to keep security of the money on one hand and to make available the requisite funds as and when required so that delay must not take place in execution of the project.

10. Accordingly, the money was kept deposited into bank account of the appellant company with Punjab National Bank wherein directions were given to the bank for transferring sum over and above a stipulated minimum balance in the account in temporary fixed deposits on day to day basis. The bank provides the facilities in such a way that as and when funds are required money lying in FDR is transferred into regular account. The bank credits interest on such temporary deposits. During this relevant year the bank given a net interest of Rs. 17,57,653 (Gross Interest Rs. 17,85,356 and reduced by Interest debited for withdrawal of FDR prior to maturity date for Rs. 27,703).

11. In the above way, the necessity of keeping the amount into FDR stands established as this mode of investment provides security as well as liquidity and therefore the earning of interest on such subsidy is intrinsically linked up with the subsidy and hence interest earned thereon cannot be equated with the facts and circumstances in the two cases cited by the Id. AO as well as by Id. CIT(A).

12. It is also further stated that treatment of such interest earned on surplus funds during pre operation period is tax neutral i.e. whether it is characterized as capital receipt or as a revenue receipt. There would be difference in time of levy of tax. In case the receipt is characterized as capital receipt it is going to reduce Pre Operation cost and such pre operation cost is allocated into various assets at the time of starting of project on which the assessee would be claiming depreciation and by characterizing it as capital receipt the ultimate depreciation allowable to the assessee would also be lower. Whereas if such receipt is characterized as revenue receipt then the Pre Operation cost would go up resulting into allowing higher depreciation in future years.

13. In the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. v/s CIT (227 ITR 172) (SC), there was no issue before the Hon'ble SC regarding connection of the income earned inextricably with the borrowed funds and hence it was verdicted that interest on surplus funds during Pre operation period is liable to be taxed separately.

14. In the case of CIT v/s Bokaro Steel Ltd. (236 ITR 315) (SC) the Hon'ble Court examined the relation between the source of income and its connection with the activity for which it had borrowed funds and based thereon it was held that interest on advances made to contractors, rent charged from contractors for letting quarters for the use of employees of contractors and rent of machinery let to the contractors for construction of building were capital receipt and would go to reduce the cost of construction.

15. In the case of CIT v/s Karnataka Power Corporation (247 ITR 268) (SC) the issue was with reference to treatment of interest receipts and hire charges from contractors as to whether such receipts are revenue in nature or capital so as to reduce its capital cost. The Hon'ble Court by following the theory enunciated in the case of Bokaro Steel Ltd. held in favour of the assessee.

16. In the case of Bongaigaon Refinery & Petrochemicals Ltd. v/s CIT (251 ITR 329) (SC) also judgement of the Hon'ble SC in the case of Bokaro Steel Ltd. was followed.

It is therefore sincerely submitted that the action of the Id. AO and Id. CIT (A) may kindly be reversed and appeal may please be allowed.

7. The Id DR is heard who has vehemently argued the matter. He has taken us through the findings of the AO and the Id CIT(A) which we have already noted above.

8. We have heard the rival contentions and perused the material available on record. The assessee company was established for the purpose of developing an Integrated Park at Silora, Kishangarh, Distt. Ajmer (Rajasthan) and for this purpose, necessary land was allotted by RIICO Ltd., Govt. of Rajasthan and under the scheme for Integrated Textile Park of the Ministry of Textiles Government of India, the assessee was sanctioned a capital grant of Rs. 38.72 Crores out of which the assessee had received a sum of Rs. 23.23 Crores uptill the end of the relevant previous year.

9. Here, it would be relevant to examine the nature and purpose for which the grant has been given by the Ministry of Textile, Govt. of India. In this regard, we refer to the guidelines for the "Scheme for Integrated Textile Park" during the 12th Five Year Plan wherein it has been stated that primary objective of the Scheme for Integrated Textile Park (SITP) launched in 2005 is to provide the industry with state of art world class infrastructure facilities for setting up their textile units. The scheme would facilitate textile units to meet international environment and social standards. The total project cost shall be funded through a mix of equity/grant from the Ministry Textiles, State Govt., State Industrial Development Corporation, Industry, Project Management Consultant and loan from banks from Financial Institutions. The Government of India support under the scheme by way of grant or equity will be limited to 40% of the project cost subject to a ceiling of Rs. 40 crore for parks. The Govt. of India support under the scheme will be generally in the form of grant to the SPV unless specifically decided by the PAC to be equity.

10. The project cost will cover common infrastructure and building for production/ support activities (including textile engineering, accessories, packaging) depending on the needs of the ITP. A part of the project cost will be met through the Govt. grant and the purpose of the grant is setting up the requisite infrastructure and support facilities for ITP and is thus clearly on capital account.

11. In terms of release of Govt. grant to the SPV is concerned, it has been stated as under:

"5.5 Release of Funds: The following schedule will be adopted for release of GOI assistance to the SPV:

(i) Ist Installment

1. Installment representing 10% of the total GOI share will be paid to the SPV subject to SPV furnishing a Bank Guarantee of equal amount to the Ministry and fulfilling of the following criteria:-

- (a) Establishment of SPV.*
- (b) Inclusion of one representative of Government of India and one representative of the PMC on the Board of Directors.*
- (c) Land to be in the possession of SPV.*
- (d) Issuance of shares by SPV to members in proportion of area allocable to them.*
- (e) Execution of share holders' agreement.*
- (f) **Establishment of escrow account in a nationalized bank.***
- (g) Recommendation of PMC confirming the above points (a) to (f).*
- (h) DPR duly validated by PMC, and approved by Project Approval Committee.*

(ii) IInd Installment

IInd installment representing 15% of the total GOI share will be paid to the SPV subject to SPV incurring their proportionate contribution (i.e.

25% of the total SPV share from all the sources) of the grant released and fulfillment of following criteria:

- (a) **Utilisation Certificate for the 1st Installment***
 - (b) Details of equity contribution*
 - (c) Sanction Letter for loan Component, in case SPV is taking term loans.*
 - (d) Award of contracts worth equivalent to at least 30% of the total project cost excluding the land cost.*
 - (e) Availability of all statutory clearances necessary for commencement of the project as certified by PMC, including water and electricity.*
 - (f) The Bank Guarantee given by the SPV will be returned upon sanction of 2nd installment of grant by the Ministry.*
 - (g) **Interest, if any earned on the GOI grant will be returned/adjusted while claiming the installment. A certificate from the Bank shall be submitted along with the claim***
- iii) IIIrd Installment*
- (h) III installment representing 25% of the total GOI share shall be released after the utilisation of the 2nd installment and after the proportionate expenditure (i.e. 50% of the total SPV share from all the sources) has been incurred by the SPV. Utilisation Certificate (UC) of the 2nd Installment shall be submitted by the SPV at the time of making claim for the 3rd Installment. **Interest, if any earned on the GOI***

grant will be returned/adjusted while claiming the installment. A certificate from the Bank shall be submitted alongwith the claim

(iv) *IVth Installment*

(a) *IV installment representing 25% of the total GOI share after the utilization of the 3rd installment and after the proportionate expenditure (i.e. 75% of the total SPV share from all the sources) has been incurred by the SPV. Utilization Certificate (UC) of the III Installment shall be submitted by the SPV at the time of making claim for the IVth Installment. **Interest, if any earned on the GOI grant will be returned/adjusted while claiming the installment. A certificate from the Bank shall be submitted alongwith the claim***

(v) *Vth Installment*

(a) *V installment representing 25% of the total GOI share will be released after successful completion of the project and after 33% of the units in ITP(or a higher percentages determined by PAC for successful completion of the specific project) start their production. Utilization Certificate (UC) of the IV Installment shall be submitted by the SPV at the time of making clam, for the final Installment. **Interest, if any earned on the GOI grant will be returned/adjusted while claiming the installment. A certificate from the Bank shall be submitted alongwith the claim.***

5.7. Separate accounts shall be kept by SPV for the funds released by GOI, which shall be subject to audit by the Comptroller & Auditor General of India.

5.8. In the event of an SPV withdrawing from executing a project before completion of the project, the SPV should immediately return the Government assistance together with interest accrued. Payment of penal interest by the SPV shall be decided by the Project Approval Committee (PAC) on case to case basis. Any revision in the period of implementation must have the approval of the PAC. In case of delays in implementation of the project beyond the agreed time schedule as approved by PAC. The Ministry of Textiles shall have the right to impose penalties on the SPV as given below.

(i) Delay of upto 3 months in the completion of the project would reduce the grant amount by 1%

(ii) Further delay in the implementation of the project would reduce the grant amount by an additional 1% for every 1 month of delay.

(iii) In the event of project implementation getting delays beyond 12 months, then the PAC could consider closure of the project at the current level of grant assistance and cancel the balance undrawn grant amount.

(iv) In the event the grant amount is reduced as indicated above, the SPV should meet the consequent gap through its own sources. (v) If it is found that the Grant has been utilized by the SPV for non eligible components of the project, MOT shall have the right to levy penalties on the SPV as may be decided by the PAC.

(vi) In the event the park is cancelled by PAC for any reason whatsoever then the SPV shall immediately return the Government assistance together with the interest accrued thereon, if any.

Payment of penal interest by the SPV @ 10% or as decided by the Project Approval Committee (PAC) on case to case basis to be returned by the SPV.

(vii) The decision of the PAC would be final and binding on the SPV.

5.9 In event of termination of project, misutilisation of the grant or unjustified untoward delay in completion of the Park the SPV will be liable to return the grant with interest thereon and/or penalty as decided by the PAC and MoT shall be within its rights to recover the moneys as arrear of land revenue.”

12. It is thus observed that the scheme envisages opening a separate bank account under an escrow arrangement where the grants so disbursed by the Govt. of India shall be credited. Further, there are mechanism put in place to closely monitor the utilization of the grant for the purposes it has been given i.e, setting up of the infrastructure facilities and also the penal mechanism has been put in place in case of misutilisation at each stage of disbursements.

13. Further, it has been specifically provided that the interest earned on the Govt. grant will be returned/adjusted while claiming the next installment of grant. In this regard, there have been subsequent communication issued by the project management company to the assessee company dated 3rd June, 2013 and 2nd July, 2013 and the text thereof reads as under:-

Letter dated 3rd June, 2013:

"As discussed recently, we are forwarding herewith the minutes of the meeting of the Project Approval Committee held on March 21, 2007, wherein it was decided that the interest accrued on the Grant released to the SPVs would be accounted for at the time of release of final installment of the Grant. Please refer to para (d) under Agenda Item No. 1 on page 1 of the minutes. Therefore, it implies that interest earned out of the fixed deposits created out of the Grant monies is refundable to the Govt. of India. Accordingly, while releasing the final installments of Grant to the Parks, the Ministry has been deducting the interest earned from the final remittance to the SPVs.

We also confirm that the above is applicable to Jaipur Texweaving Park Limited, and the said Park is part of the 22 Parks considered for review at the above mentioned PAC meeting."

Letter dated 2nd July, 2013:

"Please refer to our letter dated June 3, 2013 and your letter dated July, 2013 on the above subject. You have sought clarifications on the following para:

"Interest accrued, if any, on the grant released by the Government to the SPVs may be accounted for at the time of release of final installment of grant. The SPVs may be suitably informed".

We may clarify that the Government grant is disbursed into a separate account opened by the SPV with a bank. As these grant disbursements are received in advance with expenditure yet to be incurred, the funds

normally lie in the account unutilized for varying periods of time. Therefore, several SPVs convert the unutilized balances in the account into fixed deposits with the bank, which yield interest to the SPVs. The above decision of the PAC was as a result of the same and therefore the interest on such was to be adjusted while releasing the final installment of grant. We hope this clarifies the matter.”

We thus find that where the grant funds are kept temporary in fixed deposits, the interest earned on such funds belong to the Govt. and the mechanism which has been devised is that the interest shall be adjusted while releasing the final installment and to that extent, the final installment of grant shall be reduced. In other words, the interest partake the character of grant-in-aid as per the scheme notified by the Government which is given for setting up the requisite infrastructure for Integrated Textile Park.

14. In terms of treatment of such interest income, the assessee has shown the same by crediting the account of “pre-operative expenses” in its books of accounts and has not offered the same to tax. The taxability of interest earned on deposits during the pre-operative stage has been a subject matter of dispute and judicial scrutiny. In this regard, we refer to the decision of the Coordinate Bench in case of **Road Infrastructure Development Company of Rajasthan Ltd** Vs DCIT (*ITA No. 628/JP/2014 dated 11.08.2016*) wherein various judicial authorities including the decisions cited at the Bar by both the parties have been examined in detail:

"2.10 We have heard the rival contentions and pursued the material available on record. We find that both the parties have relied upon the decisions of the Hon'ble Supreme Court and in addition, the assessee has relied upon the decisions of Hon'ble Delhi High Court. Therefore, it would be appropriate to first refer to these decisions and some of the other recent decisions of Hon'ble High Courts and Coordinate Bench decisions.

2.11 In the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra), the Hon'ble Supreme Court held as under:—

"The facts of this case were not in dispute. In the usual course, interest received by the company from bank deposits and loans would be taxable as income under the head 'Income from other sources' under section 56. It was argued on behalf of the company that it had not yet commenced its business and in any event if the income was derived from funds borrowed for setting up the factory of the company, it should be adjusted against the interest payable on the borrowed funds.

Neither of the two factors can affect taxability of the income earned by the company the total income of the company is chargeable to tax under section 4. The Total income has to be computed in accordance with the provisions of the Act. Section 14 lays down that for the purpose of computation, income of an assessee has to be classified under six heads.

In the instant case, the company had chosen not to keep its surplus capital idle, but had decided to invest it fruitfully. The fruits of such investment will clearly be of the revenue nature.

If the capital of a company is fruitfully utilised instead of keeping it idle, the income thus generated will be of the revenue nature and not accretion of capital. Whether the company raised the capital by issue of shares or debentures or by borrowing will not make any difference to this principle. If borrowed capital is used for the purpose of earning income, that income will have to be taxed in accordance with law. Income is something which flows from the property. Something received in place of the property will be capital receipt. The amount of interest received by the company flows from its investments and is its income and is clearly taxable even though the interest amount is earned by utilising borrowed capital.

It is true that the company will have to pay interest on the money borrowed by it. But that cannot be a ground for exemption of interest earned by the company by utilising the borrowed funds as its income.

The company was at liberty to use the interest income as it liked it was under no obligation to utilise this interest income to reduce its liability to pay interest to its creditors. It could re-invest the interest income in land or shares, it could purchase securities, it could buy house property, it could also setup another line of business, it might even pay dividends out of this income to its shareholders. There was no overriding title of anybody diverting the income at source to pay the amount to the creditors of the company. It is well-settled that tax is attracted at the point when the income is earned. Taxability of income is not dependent upon its destination or the manner of its utilisation. It has to be seen whether at the point of

accrual, the amount is of the revenue nature and if so, the amount will have to be taxed.

It is true that the Supreme Court has very often referred to accounting practice for ascertainment of profit made by a company or value of the assets of a company. But when the question is whether a receipt of money is taxable or not or whether certain deductions from that receipt are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with accountancy practice. Accounting practice cannot override section 56 or any other provision of the Act.

Whether a particular receipt is of the nature of income and falls within the charge of section 4 is a question of law which has to be decided by the Court on the basis of the provisions of the Act and the interpretation of the term 'income' given in a large number of decisions of the High Courts, the Privy Council and also this Court. It is well-settled that income attracts tax as soon as it accrues. The application or destination of the income has nothing to do with its accrual or taxability. It is also well-settled that interest income is always of a revenue nature unless it is received by way of damages or compensation."

2.12 In the case of Bokaro Steel Ltd. (supra), the Hon'ble Supreme Court, after considering the decision of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra), held as under:—

"The activities of the assessee in connection with first three receipts were directly connected with or were incidental to the work of

construction of its plant undertaken by the assessee. Broadly speaking, these pertained to the arrangements made by the assessee with its contractors pertaining to the work of construction. To facilitate the work of the contractor, the assessee permitted the contractor to use the premises of the assessee for housing its staff and workers engaged in the construction activity of the assessee's plant. This was clearly to facilitate the work of construction. Had this facility not been provided by the assessee, the contractors would have had to make their own arrangements and this would have been reflected in the charges of the contractors for the construction work. Instead, the assessee had provided these facilities. The same was true of the hire charges for plant and machinery which was given by the assessee to the contractor for the assessee's construction work. The receipts in this connection also went to compensate the assessee for the wear and tear on the machinery. The advances which the assessee made to the contractor to facilitate the construction activity of putting together a very large project was as much to ensure that the work of the contractors proceeded without any financial hitches as to help the contractors. The arrangements which were made between the assessee-company and the contractors pertaining to these three receipts were arrangements which were intrinsically connected with the construction of its steel plant. The receipts had been adjusted against the charges payable to the contractors and had gone to reduce the cost of construction. They had, therefore, been rightly held as capital receipts and not income of the assessee from any independent source.

In case money is borrowed by a newly-started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalised and added to the cost of the fixed assets created as a result of such expenditure. By the same reasoning if the assessee received any amounts which were inextricably linked with the process of setting up its plant and machinery, such receipts would go to reduce the cost of its assets. These were receipts of a capital nature and could not be taxed as income.

The same reasoning would apply to royalty received by the assessee- company for stones, etc., excavated from the assessee-company's land. The land had been allowed to be utilised by the contractors for the purpose of excavating stones to be used in the construction work of the assessee's steel plant. The cost of the plant to the extent of such royalty received, was reduced for the assessee. It was, therefore, rightly taken as a capital receipt."

2.13 *That the Hon'ble Delhi High Court in the case of Indian Oil Panipat Power Consortium Ltd. (supra), after considering the decisions in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) and Bokaro Steel Ltd. (supra) at length, held as under:—*

"5. In our opinion the Tribunal has misconstrued the ratio of the judgment of the Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case (supra) and that of Bokaro Steel Ltd. (supra). The test which permeates through the judgment of the Supreme Court in Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case (supra) is that if funds have been borrowed for setting up of a plant

and if the funds are 'surplus' and then by virtue of that circumstance they are invested in fixed deposits the income earned in the form of interest will be taxable under the head 'income from other sources'. On the other hand the ratio of the Supreme Court judgment in Bokaro Steel Ltd.'s case (supra) to our mind is that if income is earned, whether by way of interest or in any other manner on funds which are otherwise 'inextricably linked' to the setting up of the plant, such income is required to be capitalized to be set off against pre-operative expenses.

5.1 *The test, therefore, to our mind is whether the activity which is taken up for setting up of the business and the funds which are garnered are inextricably connected to the setting up of the plant. The clue is perhaps available in section 3 of the Act which states that for newly set-up business the previous year shall be the period beginning with the date of setting up of the business. Therefore, as per the provision of section 4 of the Act which is the charging section income which arises to an assessee from the date of setting up of the business but prior to commencement is chargeable to tax depending on whether it is of a revenue nature or capital receipt. The income of a newly set-up business, post the date of its setting up can be taxed if it is of a revenue nature under any of the heads provided under section 14 in Chapter IV of the Act. For an income to be classified as income under the head "profit and gains of business or profession" it would have to be an activity which is in some manner or form connected with business. The word "business" is of wide import which would also include all such*

activities which coalesce into setting up of the business. See Mazagaon Dock Ltd. v. CIT & EPT [\[1958\] 34 ITR 368 \(SC\)](#), and Narain Swdeshi Weaving Mills v. CEPT [\[1954\] 26 ITR 765 \(SC\)](#). Once it is held that the assessee's income is an income connected with business, which would be so in the present case, in view of the finding of fact by the CIT(A) that the monies which were inducted into the joint venture company by the joint venture partners were primarily infused to purchase land and to develop infrastructure - then it cannot be held that the income derived by parking the funds temporarily with Tokyo Mitsubishi Bank, will result in the character of the funds being changed, inasmuch as, the interest earned from the bank would have a hue different than that of business and be brought to tax under the head 'income from other sources'. It is well-settled that an income received by the assessee can be taxed under the head "income from other sources" only if it does not fall under any other head of income as provided in section 14 of the Act. The head "income from other sources" is a residuary head of income. See S.G. Mercantile Corpn. (P.) Ltd. v. CIT [\[1972\] 83 ITR 700 \(SC\)](#) and CIT v. Govinda Choudhury & Sons [\[1993\] 203 ITR 881 \(SC\)](#).

5.2 *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 & Fertilisers Ltd. (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.'s case (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.

*6. There is another perspective from which the present issue can be examined. Under section 208 of the Companies Act, 1956 a company can pay interest on share capital which is issued for a specific purpose to defray expenses for construction of any work and which cannot be made profitable for a long period subject to certain restrictions contained in sub-sections (2) to (7) of section 208. This section was specifically noted by the Supreme Court in *Challapalli Sugars Ltd. v. CIT [1975] 98 ITR 167*.*

6.1 In our view the situation in the instant case is quite similar except here instead of paying interest on funds brought in for specific purpose interest is earned on funds brought in by way of share capital for a specific purpose. Could it be said that in the former situation interest could have been capitalized and in the later situation it cannot be capitalized. To test the principle we could extend the example, that is, would our answer be any different had assessee passed on the interest to the respective shareholders. If not, then in our view the only conclusion possible is that interest earned in the present circumstances ought to be capitalized.

7. In view of the discussion above, in our opinion the Tribunal misdirected itself in applying the decision of the Supreme Court in

Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case (supra) in the facts of the present case. In our opinion on account of the finding of fact returned by the CIT(A) that the funds infused in the assessee by the joint venture partner were inextricably linked with the setting up of the plant, the interest earned by the assessee could not be treated as income from other sources. In the result we answer the question as framed in favour of the assessee and against the revenue. These appeals are allowed and the impugned judgment is set aside."

2.14 That the Hon'ble Delhi High Court in the case of Sasan Power Ltd (supra) following the decision in case of Indian Oil Panipat Power Consortium Ltd. (supra), has held as under:

"14. It is clear from the facts stated above that Commissioner of Income Tax (Appeals) and tribunal have specifically held that the interest income was on capital account. We have gone through the grounds of appeal and do not find any reason or justification to upset the said finding. The factual findings recorded by the CIT(Appeals) and tribunal are not under challenge. The CIT(Appeals) and the tribunal have held that in view of the factual position quoted above the decision of the Supreme Court in CIT v. Bokaro Steel Ltd. [1999] [236 ITR 315](#) / [102 Taxman 94](#) was applicable as the Commitment Advance, which had been paid to PFC. This is not a case of surplus funds, which were available and investment were made in fixed deposits to earn interest. The interest paid to the power procurement utilities on commitment advances was capitalized. Interest paid and interest received were inextricably linked and have a commonality about their nature and character. The appellant cannot treat them differently. Commitment Advances and interest paid and received had reference to bidding process and linked to the project/purpose for which the respondent was set up. In view of the factual matrix, interest received on unutilized commitment advances cannot be taxed as revenue income and interest paid on commitment advance

treated as a capital expense. This will be contradictory. The entire expenditure for inviting bids etc. and even documentation was paid to PFC. The amounts received from the prospective bidders on account of sale of tender documents was also transferred to PFC. As noticed above, Revenue has not challenged and has accepted the order of the tribunal deleting addition of Rs. 1,35,81,234/-paid by the respondent-assessee to PFC for preparation of tender documents. In view of the factual matrix, the tribunal has rightly followed the ratio in Indian Oil Panipat power Consortium Ltd.'s case (supra)."

2.15 In a recent decision, the Delhi High Court in case of Pr. Commissioner of Income-tax v. Facor Power Ltd. [2016] 66 taxmann.com 178 (Delhi) following the decision in case of Indian Oil Panipat Power Consortium Ltd. (supra), has held as under:

11. *From the above extract, it is evident that the test that is required to be employed is whether the activity which is taken up for setting up of the business and the funds which are garnered are inextricably connected to the setting up of the same. In the present case, findings of fact have been returned by the Commissioner of Income Tax (Appeals) and have been confirmed by the Income Tax Appellate Tribunal to the effect that the funds were inextricably connected with the setting up of the power plant of the assessee. The learned counsel for the revenue has also not been able to point out any perversity in such finding and, therefore, the factual findings have to be taken as those accepted by the Income Tax Appellate Tribunal which is the final fact finding authority in the income tax regime. That being the case, the decision of the Division Bench in Indian Oil Panipat Power Consortium Ltd. (supra) would squarely apply to the facts of the present case and the Tribunal was right*

in applying the same.

13. *In the present case, there is a finding of fact that the money placed in the fixed deposit was inextricably linked with the setting up of the power plant. Thus, the revenue generated on account of interest on the said fixed deposits would be in the nature of a capital receipt and not a revenue receipt. This case has been decided on the basis of this principle and not on the basis that the source of the funds was through raising of share capital and not through borrowings."*

2.16 The Coordinate Bench in case of Adani Power Ltd. v. Assistant Commissioner of Income-tax, Range-1, Ahmedabad [2015] 61 taxmann.com 355 (Ahmedabad - Trib.) has held as under:

"2.16 From the above, it is evident that the Hon'ble Delhi High Court has considered and interpreted the decisions of Hon'ble Apex Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) as well as Bokaro Steel Ltd. (supra). The conclusion of the Delhi High Court is in fact the law which emerges as per the decision of Hon'ble Apex Court. Therefore, in our opinion, the CIT(A) was not justified in ignoring the decision of Hon'ble Delhi High Court by simply mentioning that the issue is covered by the decision of Hon'ble Apex Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra). After considering these two decisions of the Hon'ble Apex Court and also some other decisions of the Hon'ble Apex Court, their Lordships of the Delhi High Court arrived at the conclusion "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 the 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 the pre-operative expenses." That, the ratio of the above finding of the Hon'ble Delhi High Court would be squarely applicable to the facts of the assessee's case, because admittedly in the case under appeal before us the share capital as well as loans were raised for the specific purpose of setting up of the power generation plants. The business of the assessee has not been commenced and therefore, as per above decision, the interest received in the period prior to commencement of business was in the nature of capital receipt and hence was required to be set off against the pre-operative expenses. The assessee has already set off the interest income against the pre-operative expenses which is titled as "project development expenditure". In view of above, we are of the opinion that the interest income of Rs.1,35,87,158/- as well as Rs.1,64,07,481/- was a capital receipt not chargeable to tax during the year under consideration. Accordingly, Ground Nos. 1 of the assessee's appeal is allowed."

2.17 Further, we drawn guidance from the decision of Hon'ble Rajasthan High Court in case of *Commissioner of Income-tax-I v. Kansara Modler Ltd. [2012] 20 taxmann.com 641 (Raj.)* wherein it was held that:

"13. In that view of the matter, what we are required to consider is, as to whether the Tribunal was legally justified in not applying the judgment rendered in Tuticorin's case (supra), or that, the Tribunal was justified in applying the judgments given in Bokaro Steel, and Karnal Cooperative

Sugar Mill's case. If this question were to come originally before us, perhaps we might have taken a task of undertaking the exercise, as to which of the views is required to be followed, and may be, that we might have come to any conclusion, either ways. In such circumstances, when the learned Tribunal, after examining all the three judgments, in Tuticorin's case (supra), Karnal Cooperative Sugar Mill's case (supra), and Bokaro Steel's case (supra), has examined the question, and found Karnal Cooperative's case (supra) to be the nearest, and latest case, on facts, in our view, it cannot be said, that the Tribunal was wholly wrong in adopting this course. It would have been equally the same situation, if the learned Tribunal would have adopted the other line of reasoning, following the judgment in Tuticorin's case (supra).

14. Therefore, when there are two sets of judgments of Hon'ble Supreme Court, proceeding on different lines of reasoning's, and both stand on their own logical footing, and in that event, if the learned Tribunal has accepted one line of reasoning, supported by one set of judgments, it cannot be said, that the learned Tribunal was legally not justified in following the decision, as followed by it, simply because it might have been possible, or might be more appropriate to follow the other set of judgment, by following the other line of reasoning."

2.18 From the above, it is evident that there are two sets of judgments of Hon'ble Supreme Court, proceeding on different lines of reasonings. The Hon'ble Delhi High Court in case of Indian Oil Panipat Consortium Ltd (supra) has considered and interpreted the decisions of Hon'ble Supreme Court in case of Tuticorin Alkali Chemicals & Fertilizers (supra) as well as Bokaro Steel Ltd (supra). After analyzing both the decisions of Hon'ble Supreme Court, it held

that "the test which permeates through the judgment of the Supreme Court in Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case (supra) is that if funds have been borrowed for setting up of a plant and if the funds are 'surplus' and then by virtue of that circumstance they are invested in fixed deposits the income earned in the form of interest will be taxable under the head 'income from other sources'. On the other hand the ratio of the Supreme Court judgment in Bokaro Steel Ltd.'s case (supra) to our mind is that if income is earned, whether by way of interest or in any other manner on funds which are otherwise 'inextricably linked' to the setting up of the plant, such income is required to be capitalized to be set off against pre-operative expenses."

2.19 The facts in the instant case are pari materia with the facts of the Indian Oil Panipat (supra) and the ratio decidendi of Hon'ble Delhi High Court in that case will squarely apply to the facts of the assessee. In the instant case, undisputedly, the funds have been borrowed for the specific purpose of execution of the mega road projects and as per the loan agreement executed between the consortium of bankers and the assessee dated 23.11.2005, all the disbursements shall be deposited in the trust and retention account which shall be subject to strict control and verification by the Senior lenders and all disbursements shall be utilised solely for the purposes of implementation of the project and no other purpose. The funds are thus inextricably linked to the setting up of the mega road projects and interest earned on such borrowed funds infused in the business could not be classified as income from other sources. We also note a distinguishing feature in the instant case that the assessee is not at liberty to use the interest so earned as per its will and discretion unlike the case in Tuticorin Alkali Chemicals & Fertilizers (supra) and the interest has to be used solely for the purposes of implementation of the

specified projects only. The impunged interest receipt of Rs. 35,39,479/- on such borrowed funds relates to the mega road projects/stretches which were under construction and the completed road projects/stretches upto the date of commencement of commercial operations. Therefore, the interest received prior to commencement of commercial operations of the specified mega road projects will be in the nature of capital receipt and will be required to be set off against the pre-operative expenditure capitalized under the head "Capital work in progress" and the same cannot be brought to tax under the head "income from other sources". Hence, ground no. 1 of the assessee is allowed."

15. The above decision of the Coordinate Bench has been affirmed by the Hon'ble Rajasthan High Court in DB Appeal No. 144 of 2017 dated 18.07.2017 reported in 96 Taxman.com 155 (Raj).

16. Following the same, in the instant case, undisputedly, the grant has been given by the Ministry of Textile, Government of India to part-finance the project cost for setting up the Integrated Textile Park by the assessee company whereby the grants shall be utilized for the purposes of setting up the common infrastructure and buildings for production/support activities. The assessee is required to open a separate escrow account with a bank where the grants shall be credited and the utilization thereof shall be closely monitored. The funds so granted by the Government are for the specific purpose of setting up the Integrated Textile Parks. Further, interest earned on temporary deposits of such grant funds shall be adjusted while disbursing the final installment of the grant and thus, partake the character of grant-in-aid and capital receipt as the grant initially sanctioned will get reduced to the extent of interest receipt. The said adjustment is not unilateral rather it is flowing from the scheme under

which the Government of India has granted the funds to the assessee. It is thus a bilateral agreement between the Government of India and the assessee and the essence of such an agreement needs to be given due cognizance while interpreting the same. Any interpretation devoid of such an understanding between the two parties cannot be a basis for bringing the interest receipt to tax. Therefore, the interest receipt will be in the nature of capital receipt and the same cannot be brought to tax under the head "income from other sources". Hence, ground of the assessee's appeal is allowed.

In the result, appeal filed by the assessee is allowed.

Pronounced in the Open Court on 13/12/2018.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 13/12/2018.

*Ganesh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Jaipur Texweaving Park Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(2), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 31/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

