

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: Bench 'D', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 4254/Del/2015

AY: 2012-13

ACIT Circle 22(2), Room No. 226, 2 nd Floor, C.R. Bldg., I.P. Estate, New Delhi.	vs.	Sasan Power Ltd. H Block, 1 st Floor, Dhrubhai Ambani Knowledge City, Koparkhairne, Navi Mumbai. AAKCS0723M
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(Appellant)

(Respondent)

Appellant by : Smt. Naina Soin Kapila, Sr. DR
Respondent by : Sh. Ajay Kumar Agarwal, CA

Date of Hearing : 22/01/2019

Date of Pronouncement: 24/01/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by Revenue against order dated 29/04/15 passed by Ld. CIT (A)-8 on following grounds of appeal:

1. *“On the facts and in the circumstances of the case the Ld.CIT(A) has erred in deleting the addition of Rs. 4,59,51,001/- made on account of interest income treated as revenue receipts instead of capital receipts claimed by the assessee.*
2. *The appellant craves to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of this appeal.”*

Brief facts of the case are as under:

2. Appellant had filed its return of income for AY 2012-13 on 29.09.2012 declaring total income of Rs. 2,10,14,280/-. Case was

selected for scrutiny. During the scrutiny proceeding, Ld. AO observed that, amount of interest earned Rs. 4,59,51,001/- was considered as capital receipt and not offered for taxation. Assessee explained before Ld. AO that this issue has already decided by the *Hon'ble Delhi High Court* in favour of assessee. However, Ld. AO made addition on the ground that department has filed SLP before the *Hon'ble Supreme Court* on this issue for AY 2007-08.

3. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld. CIT (A), who deleted the addition.

4. Aggrieved by order of Ld.CIT (A) revenue is in appeal before us now.

5. At the outset, Ld.AR submitted that identical issue was raised in assessee's own case for assessment year 2007-08, 2008-09 and 2010-11. He submitted that this issue now stands settled with order passed by *Hon'ble Delhi High Court* in assessee's own case, against which revenue filed SLP before *Hon'ble Supreme Court*.

6. On the contrary Ld.DR placed reliance upon observations of Ld.AO.

7. We have perused submissions advanced by both sides and the light of the records placed before us.

7.1 It is observed that *Hon'ble Delhi High Court* in assessee's own case reported in (2012) 18 *Taxmann.com* 182 has decided this issue 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)."

8. It is observed that Ld.CIT (A) upon following above observations by *Hon'ble Delhi High Court* and subsequent orders passed by this Tribunal in assessee's own case, deleted addition made by Ld.AO.

8.1 Ld. CIT(A) further recorded that, assessing officer simply followed orders of earlier years and added amount on the reason that Department filed SLP before *Hon'ble Supreme Court*. As the issue as on date stands settled in favour of assessee by decision of *Hon'ble Delhi High Court* in assessee's own case (supra) we do not find any infirmity in order passed by Ld.CIT (A).

Accordingly, the grounds raised by revenue stands dismissed.

In the result appeal filed by revenue stands dismissed.

Order pronounced in the open court on 24/01/2019

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Dated: 24.01.2019

*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	22.01.2019
Date on which the typed draft is placed before the dictating Member	23.01.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	24/01
Date on which the fair order comes back to the Sr. PS/PS	24/01
Date on which the final order is uploaded on the website of ITAT	24/01
Date on which the file goes to the Bench Clerk	24/01
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	