

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.1636/Hyd/2017		
Assessment Year: 2013-14		
BKP Mining Corporation Limited, Hyderabad. PAN: AA ECC 6549 D	Vs.	Income Tax Officer, Ward-1(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri K.C. Devdas	
Revenue by:	Sri R. Mohan Reddy, DR	
Date of hearing:	15/11/2018	
Date of pronouncement:	13/02/2019	

ORDER

PER Smt. P. Madhavi Devi, J.M.:

This is an appeal filed by the assessee against the order of the CIT(A)-1, Hyderabad dated 18/5/2017 for the assessment year 2013-14. The assessee has raised the following grounds of appeal:-

1. *The order of the CIT(A) is erroneous in law as well as facts of the case.*
2. *The CIT(A) ought to have held that pre-operative interest of Rs. 23,57,172/- earned in respect of deposit of share capital is liable to be set-off against pre-operative expenditure and the same was not liable to tax under the head 'income from other sources'.*
3. *The CIT(A) ought to have held that the Assessing Officer erred in observing that the decision of Hon'ble Supreme Court in the case of M/s. Tuticorn Alkali Chemicals & Fertilizers Ltd was applicable as the facts of the appellant case are Completely distinguishable from the facts of the case relied upon."*

2. Brief facts of the case are that the assessee-company, which is engaged in the business of development of housing projects and also setting up of Solar Energy Projects, filed its return of income for the assessment year 2013-14 declaring its income at Rs. 12,55,310/- under the normal provisions and an amount of Rs. 12,55,309/- under MAT provisions. The case was selected for scrutiny under CASS and accordingly notices were issued. The assessee furnished required details.

3. On perusal of the same, the A.O. observed that the assessee-company is a company established and promoted with an intention to harness Electricity Energy by using Solar Power besides other objects and that in this process, it mobilised funds by way of share capital from shareholders to the extent of Rs. 10,44,10,000/-. He observed that the assessee-company applied for tender for production of Solar Energy but, since it was time consuming process, the assessee deposited the mobilized share capital with banking institutions and earned interest to the extent of Rs. 23,57,172/-. The assessee-company claimed set-off of interest income against the expenditure incurred by it during the accounting year relevant to the A.Y. 2013-14 and the balance of Rs. 12,55,309/- was offered for tax. The assessee relied upon the decisions of the ITAT in the case of Indian Oil Panipat Power Consortiam Ltd and Adani Power Limited in support of its claim and also submitted that the

decision of the Hon'ble Supreme Court in the case of M/s. Tuticorin Alkali Chemicals and Fertilizers Ltd vs. CIT (227 ITR 172) (SC) was not applicable to it. The Assessing Officer, however, held that the decision of the Hon'ble Supreme Court in the case of M/s. Tuticorin alkali Chemicals and Fertilizers Ltd (supra) is squarely applicable to the assessee's case since the assessee-company deposited the 'surplus funds' in the HDFC Bank Ltd as Fixed Deposits and earned interest income to the extent of Rs. 23,57,172/-. He observed that the expenditure incurred by the assessee before setting up of the business and the commencement of the business would be permissible deductions, but the expenses incurred during the preparatory stage prior to setting up of the business would not qualify for deduction. He also observed that deposits were made not for giving bank guarantee or as Margin Money but, only the idle funds lying with the company were deposited as Fixed Deposits in the bank and therefore, 'interest income' therefrom has to be treated as 'income from other sources' and the pre-operative expenditure amounting to Rs. 11,01,863/- is to be capitalised. Accordingly, he brought the entire interest income to tax as 'income from other sources'.

4. Aggrieved, assessee preferred an appeal before the CIT(A), who confirmed the order of the A.O and therefore, the assessee is in second appeal before us.

5. Learned Counsel for the Assessee reiterated the submissions made before the lower authorities and also placed reliance upon the decision of the Coordinate Bench of the Tribunal at Ahmedabad in the case of Adani Power Limited vs. ACIT (ITA No.2755/Ahd/2011, dated 27/07/2015).

6. Learned Departmental Representative, on the other hand, relied upon the orders of the Authorities below.

7. Having regard to the rival contentions and the material on record, we find that the assessee's arguments that the judgment of the Hon'ble Supreme Court in the case of M/s. Tuticorin Alkali Chemicals and Fertilizers Ltd (supra) is on the treatment to be given to the interest earned from Fixed Deposits and not as to whether pre-operative expenditure can be allowed from such income is not acceptable. As per the judgment of the Hon'ble Supreme Court, the interest income has to be treated as 'income from other sources'. Admittedly, the pre-operative expenditure claimed by the assessee is to be capitalised. In the case of Adani Power Ltd (supra), the interest therein was earned from Margin Money kept in the banks and therefore, the Tribunal had directed that the interest earned therefrom is relatable to the business of the assessee and therefore, it is 'business income', whereas in the case before us, it is idle funds which are kept with the banks and therefore, the interest earned thereon cannot be treated as business income of the assessee.

Thus, we see no reason to interfere with the orders of the Authorities below. Assessee's appeal is accordingly dismissed.

8. In the result, appeal filed by the assessee is dismissed.

Pronounced in the open Court on 13th February, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 13th February, 2019

OKK

Copy to:-

- 1) B. Narsing Rao & Co., Chartered Accountants, Plot No.554, Road No.92, Jubilee Hills, Hyderabad-96.
- 2) ITO, Ward-1(3), Hyderabad.
- 3) The CIT(A)-1, Hyderabad
- 4) The Pr. CIT-1, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File