

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 5740/DEL/2015 ( A.Y 2012-13)**

ITO Ward-17(4), Room No. 225D, C. R. Building, I.P. Estate New Delhi  <b>(APPELLANT)</b>	Vs	National High Power Test Laboratory Pvt. Ltd. Core 8, 1 <sup>st</sup> Floor, Scope Complex, 7 Institutional Area, Lodhi Road New Delhi AADCN0782A <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Surender Pal, Sr. DR</b>
<b>Respondent by</b>	<b>Sh. Sudhir Kumar, FCA</b>

<b>Date of Hearing</b>	<b>11.02.2019</b>
<b>Date of Pronouncement</b>	<b>15.02.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 28/07/2015 passed by CIT(A)-6, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

1. *“Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 1,61,63,104/- made by the Assessing Officer on account of income from other sources?”*

2. *That the order of the Ld.CIT(A) is erroneous and is not tenable on facts and in law.”*

3. The assessee company filed its return of income electronically on 12.09.2012 declaring NIL income. The company was incorporated on 22nd May 2009 with an authorized share capital of Rs.120 crores with the main

object to establish On Line High Power Short Circuit Test Laboratory in Bina, Madhya Pradesh which will provide full range of Short Circuit testing for the electrical equipment industry and power supply utilities in conformance to Indian and International Standards. The company is a Joint Venture Company of govt, organizations viz. NTPC Limited, Power Grid Corporation of India Limited, NHPC Limited, Damodar Valley Corporation, and Central Power Research Institute, each participating equally in equity. The main work of construction of Test Laboratory was started in the year 2011 which was expected to be complete in the financial year 2015-16. The funds for the entire project had been planned to be financed by way of 40 % as equity contribution from the shareholders and the balance 60% by raising debt funds. The Assessing officer made the addition on account of interest income from banks amounting to Rs.1,61,63,104/- treating the same as revenue receipt under the head Income from Other Sources u/s 56 while framing assessment u/s 143(3) of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal.

5. The Ld. DR submitted that the assessee company invested the surplus funds, which were not immediately required by it, in FDRs. The deposits given by the Company were not in the regular course of business nor was if the business of the Company to make deposits and earn interest. The interest income cannot be said to be attributable to the activities of the Company. The interest had accrued on the funds, which were not immediately required by the assessee Company for its business purposes and which were invested in FDRs. The Ld. DR further submitted that the interest earn on FDRs not earn out of business regularly carried out by the assessee company. The Ld. DR submitted that the case of the assessee company is squarely covered by the Hon'ble Apex Court decision in case of Tuticorin Alkali Chemicals and Fertilizers Ltd. Vs. CIT (1997) 227 ITR 172(SC). Thus, the Ld. DR relied upon

the Assessment Order.

5. The Ld. AR relied upon the decision of the CIT(A) and also relied upon the decision of the Apex Court in case of CIT Vs. Bokaro Steel Limited (1999) 236 ITR 315.

6. We have heard both the parties and perused the material available on record. The CIT (A) held as under:-

**“CIT (Appeals)’s Decision**

*Ground No. 2 relates to adding, altering or amending any/all grounds of appeal. The assessee has not altered or amended any grounds of appeal. It has not added any new ground of appeal. It has not pressed on this ground during appeal proceedings. Hence, it is treated as withdrawn/dismitted.*

*Ground No. 1 relates to receipt of interest from banks of Rs. 161.63 Lakhs.*

*The facts are as under:-*

*The Company was incorporated on 22nd May 2009 with an authorized share capital of Rs.120 crores with the main object to establish a state of art On Line High Power Short Circuit Test Laboratory in Bina,*

*The company is a Joint Venture Company formed by NTPC Limited, Power Grid Corporation of India Limited (PGCIL), National Hydroelectric Power Corporation Limited (NHPC), Damodar Valley Corporation (DVC), and Central Power Research Institute (CPR1), each participating equally in equity. The total revised estimated cost of the project is Rs.380 crores.*

*The funds were raised through equity capital from joint venture partners and were placed in temporary deposits with banks so that liquidity was ensured and money would remain available when required for project.*

*Hon'ble Delhi High Court in the case of Indian Oil Panipat Consortium Ltd. vs. ITO (2009) 315 ITR 255 (Del.) [Refer page no.27 to 33 of the paper book] held that where interest on money received as share capital is temporarily placed in fixed deposit, a claim that such interest is a capital receipt entitled to be set off against pre-operative expenses, is admissible, as the funds received by the appellant company for development of infrastructure of project by the joint venture partners are "inextricably linked" with the setting up of the project and such interest earned cannot be treated as income from other sources.*

*The AO in the assessment order treated the interest receipts as revenue in nature and taxed it as income from other sources. Reliance was made on the judgment of Hon'ble Supreme Court delivered in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd.*

### **CONCLUSION**

*Going by the facts and the nature of the receipts, the judgment in the case of Indian Oil Panipath Power Consortium (Delhi High Court), squarely applies to the present case.*

*Delhi High Court relied on the Supreme Court judgment in CIT Vs. Bokaro Steel Limited (supra) that if income is earned, whether by way of interest or in any other manner on funds Delhi High Court relied on the Supreme Court judgment in CIT Vs. Bokaro Steel Limited (Supra) 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 plant, such income is required to be capitalized to be set off against pre-operative expenses. The Hon'ble Delhi High Court had also distinguished the facts before them from the facts which were before the apex court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd, v CIT.*

*The AO failed to establish that these were surplus funds parked in the banks*

*to earned interest. The assessee, a public sector undertaking could prove that the source of funds is from capital contributed by different constituents of the joint venture consortium and parking of the funds is linked to the execution of projects.*

*Going by the facts and various decisions cited above including the decision of different appellate authorities of other group concerns mentioned above, the interest receipts are treated as capital in nature and the addition made is hereby deleted.”*

The CIT(A) has given detailed finding after considering the Apex Court decisions in case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) as well as Bokaro Steel Ltd. The CIT(A) rightly held that the Assessing Officer failed to establish that these were surplus funds parked in the banks to earn interest. In the present case, the assessee company established that interest income inextricably linked with the setting up of the project is a capital receipt and thus it requires to be capitalized to be set off against the pre-operative expenses as capital work in progress. In fact, the Ld. AR pointed out that the work was commenced in the year 2017 itself. It can be seen that in both the assessment orders the commencement of the business was not started but was only to the extent that the company was setting up a plant activities like land acquisition, statutory, clearance, development of infrastructure but the business activity was not started in the Assessment Year under consideration before us. In the present case, the interest was not earned on the surplus funds but were equity contribution by the joint venture of partners for acquisition, construction and setting up of a plant and other infrastructure facilities. The funds kept in the current account of the company were used for on-going construction activity as and when required. The ratio laid down in case of Bokaro Steel, will not be applicable in the present case. In the present case, interest income inextricably linked with the setting up of the project is a capital receipt and thus it requires to be capitalized to be set off against the

pre-operative expenses as capital work in progress. There was no intention of the assessee to earn any interest on such funds. The funds were kept in liquid so as to use them as and when required. The interest was not earned out of the surplus funds, so treating the said income as income from other source by the Assessing Officer is not justified. Therefore, the CIT(A) has correctly applied the ratio laid down by the Apex Court in Tuticorin Alkali Chemicals and Fertilizers Ltd. There is no need to interfere with the findings of the CIT(A). Hence, the appeal of the Revenue is dismissed.

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

**Order pronounced in the Open Court on 15th FEBRUARY, 2019.**

**Sd/-  
(R. K. PANDA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 15/02/2019  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	11.02.2019
Date on which the typed draft is placed before the dictating Member	11.02.2019
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	
Date on which the fair order comes back to the Sr. PS/PS	15.02.2019
Date on which the final order is uploaded on the website of ITAT	15.02.2019
Date on which the file goes to the Bench Clerk	15.02.2019
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	