

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं  
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1379/Chny/2017  
निर्धारण वर्ष /Assessment Year: 2006-07

The Dy. Commissioner of-  
Income Tax,  
Corporate Circle-2(2),  
Chennai.

**Vs.** M/s.Indo Tech Transformers-  
Ltd.,  
DP-36, SIDCO Industrial  
Estate, Thirumazhisai,  
Chennai-602 107.

(अपीलार्थी/Appellant)

**[PAN: AAACI 5775 P]**  
(प्रत्यर्थी/Respondent)

Department by	:	Mr. M.S.Nethrapal, JCIT
Assessee by	:	Mr. R.Vijayaraghavan, Adv.
सुनवाई की तारीख/Date of Hearing	:	22.08.2019
घोषणा की तारीख /Date of Pronouncement	:	16.09.2019

**आदेश / O R D E R**

**PER INTURI RAMA RAO, ACCOUNTANT MEMBER:**

This is an appeal filed by the Revenue directed against the Order of the Commissioner of Income Tax (Appeals)-6, Chennai, dated 20.03.2017 for the AY 2006-07.

**2.** The appeal filed by the Revenue is delayed by '09' days, for which, the AO has filed the affidavit requesting for condonation of delay, to which, the Ld.Counsel of the assessee has not raised any serious

objection. Consequently, the delay of '09' days in filing of the appeal stands condoned and the appeal is disposed off on merits.

**3.** The appellant raised the following grounds of appeal:

*1. The Order of the learned Commissioner of Income Tax (Appeals) contrary to the Law and facts of the case.*

*2.1 The CIT(A) erred in deleting the disallowance on non-reduction of interest income earned on share application money by directing the AO to reduce the same from total income of the assessee while giving to the order of CIT(A).*

*2.2. The CIT(A) failed to consider the judgement in favour of the revenue on the similar issue by the Hon'ble Supreme court in the case of Tuticorin Alkali Chemicals & fertilizers Ltd., vs Commissioner of Income Tax 141 CTR SC 387 (1997).*

*3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.*

**4.** Brief facts of the case are that the respondent-assessee namely M/s.Indo Tech Transformers Ltd., company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of manufacture and sale of electrical transformers. The return of income for the AY 2006-07 was filed on 30.11.2006 declaring a total income of Rs.17,97,20,830/-. Against the said return of income, the assessment was completed by the AO vide order dated 30.12.2008 u/s.143(3) of the Act. While doing so, the AO made the following additions:

*1. Contractual deductions by SEBs – Rs.1,25,70,176/-*

*2. Disallowance of expenditure u/s.14A r.w.r.8D – Rs.15,37,466/-*

**5.** Being aggrieved, an appeal was preferred before the Ld.CIT(A) who vide impugned order, allowed the appeal. While doing so, the Ld.CIT(A) deleted the addition u/s.14A, as regards, the disallowance u/s.80IB, the Ld.CIT(A) remanded the matter back to the file of the AO to consider the claim afresh. The Ld.CIT(A) also directed the AO to delete the interest of

Rs.1,63,38,322/- on the share application money though the amount was offered to tax by the assessee in the return of income by following the decision of the Hon'ble Rajasthan High Court in the case of CIT v. Neha Proteins Ltd., reported in [2008] 306 ITR 102 (Raj.)

**6.** Being aggrieved by the decision of the Ld.CIT(A) to delete the interest earned from the share application money, the Revenue is in appeal before us. The Id.Sr.DR submitted that the Ld.CIT(A) ought not to have directed the ITO to delete the interest from the taxable income.

**7.** We have considered the rival submissions and perused the materials placed on record.

**8.** The issue in the present appeal stands covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of CIT v. Shree Rama Multi Tech Ltd., reported in [2018] 403 ITR 0426 (SC), wherein, it has been held as under:

*".....9) Coming back to the facts of the case, we may reiterate that the Respondent was statutorily required to keep share application money in the separate account till the allotment of shares was completed. Interest earned on such separately kept amount was to be adjusted towards expenditure for raising share capital. We are, therefore, of the opinion that interest earned was inextricably linked with requirement of company to raise share capital and was thus adjustable towards the expenditures involved for the share issue. Though learned counsel for the Appellant contended that part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share application money would not ultimately be appropriated by the Company, insofar as present case is concerned, we do not see how this factor would make any significant difference. Interest earned from share application money statutorily required to be kept in separate account was being adjusted towards*

*the cost of raising share capital. In that view of the matter, we are of the opinion that the High Court was right in allowing such deduction.*

*10) In light of the above developments in the case, the question of law has been decided by this Court in case in Bokaro Steel Ltd. (supra), wherein the company was set up to produce steel. When the construction of plant was yet not completed, company earned interest on advances to contractor, rent from quarters let out to employees of the contractor as well as other income such as hire charges on plant and machinery let out to contractor, royalty on stones removed from its land. It was in this background that this Court held that the amounts were directly connected to and incidental to construction of plant by the company, amounts were capital receipts and not income from any independent source.*

*11) Further, the rationale of judgment of Bokaro Steel Ltd. (supra) was followed in Commissioner of Income Tax vs. Karnal Co-operative Sugar Mills Ltd. (2000) 243 ITR 2 (SC). In this case, the company had deposited certain amount with the bank to open letter of credit for purchase of machinery for setting up plant. On the money so deposited, it earned interest. In that background, this Court observed that this is not a case where any surplus shares capital money which was lying idle had been deposited in the bank for the purpose of earning interest. The deposit of money is directly linked with the purchase of plant and machinery.*

*12) The common rationale that is followed in all these judgment is that if there is any surplus money which is lying idle and it has been deposited in the bank for the purpose of earning interest then it is liable to be taxed as income from other sources but if the income accrued is merely incidental and not the prime purpose of doing the act in question which resulted into accrual of some additional income then the income is not liable to be assessed and is eligible to be claimed as deduction. Putting the above rationale in terms of the present case, if the share application money that is received is deposited in the bank in light of the statutory mandatory requirement then the accrued interest is not liable to be taxed and is eligible for deduction against the public issue expenses. The issue of share relates to capital structure of the company and hence expenses incurred in connection with the issue of shares are to be capitalized because the purpose of such deposit is not to make some additional income but to comply with the statutory requirement, and interest accrued on such deposit is merely incidental. In the present case, the Respondent was statutorily required to keep the share application money in the bank till the allotment of shares was complete. In that sense, we are of the view that the High Court was right in holding that the interest accrued to such deposit of money in the bank is liable to be set-off against the public issue expenses that the company has incurred as the interest earned was inextricably linked with requirement of the company to raise share capital and was thus adjustable towards the expenditure involved for the share issue.*

*13) In view of the forgoing discussion, we are of the view that the High Court was right in upholding the decision of the Tribunal dated 21.10.2011 that the interest income earned out of the share application money is liable to be set off against the public issue expenses. The judgment passed by the Division Bench of the High Court in remanding the matter to the Tribunal on other issues requires no interference”.*

9. In the light of the above decision of the Hon'ble Supreme Court in the case of CIT v. Shree Rama Multi Tech Ltd., supra, we do not find any merit in the present appeal filed by the Revenue.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 16<sup>th</sup> September, 2019 in Chennai.

**Sd/-**

(जॉर्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(इंटूरी रामा राव)

**(INTURI RAMA RAO)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 16<sup>th</sup> September, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF