

**IN THE INCOME TAX APPELLATE TRIBUNAL, "E" BENCH MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER  
ITA No. 1504/Mum/2018 for Assessment Years: 2013-14**

ACIT Circle-6(2)(2), Room No. 504, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs	Essar Power Orrisa Ltd. Essar House, 11 K.K. Marg, Mahalaxmi, Mumbai-400034. <b>PAN : AABCE6129N</b>
(Appellant)		(Respondent)

**ITA No. 1506/Mum/2018 for Assessment Years: 2013-14**

ACIT Circle-6(2)(2), Room No. 504, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs	Essar Power MP Ltd. Essar House, 11 K.K. Marg, Mahalaxmi, Mumbai-400034. <b>PAN : AABCE6086C</b>
(Appellant)		(Respondent)

**ITA No. 1507/Mum/2018 for Assessment Years: 2014-15**

ACIT Circle-6(2)(2), Room No. 504, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs	Essar Power Hazira Ltd. Essar House, 11 K.K. Marg, Mahalaxmi, Mumbai-400034. <b>PAN : AABCE8234A</b>
(Appellant)		(Respondent)

Appellant by :	Shri Amit Pratap Singh (DR)
Respondent by :	Shri Vijay Mehta (AR)

**Date of Hearing : 03/10/2019  
Date of Pronouncement : 03/10/2019**

Order under section 254(1) of Income Tax Act

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These three appeals by revenue are directed against the separate orders of Id. Commissioner of Income Tax (Appeals)-32, [CIT(A)], Mumbai dated 08.12.2017 for Assessment Year 2013-14, passed against the three different

but group entities. In appeal appeals, the revenue has raised identical grounds of appeal except variation of figure, facts in all appeals are also similar, therefore, all the appeals were clubbed, heard and are decided by a consolidated order. With the consent of parties, the appeal in ITA No. 1504/Mum/2018 is treated as lead case. The revenue has raised the following grounds of appeal:

1. "On the facts and circumstances of the case and in law, the Ld CIT(A) has erred in giving finding that interest of Rs.2, 65, 85, 922/- on margin money kept for obtaining bank guarantee / letters for credit for power business is to be assessed under the head (Business Income' and upholding the action of the assessee in reducing the above amount from the work in progress (WIP) account, ignoring the detailed reasoning given by the Assessing Officer in para 5 of the Assessment Order that it is taxable under the head (Income from Other Source'.
  2. "On the facts and circumstances of the case and in law, the Ld CIT(A) has allowed the appeal of treating interest on margin money as Business Income, ignoring the facts that the interest income that had been received by the assessee on its fund kept in deposit with the bank and does not have any direct nexus with the Business that was being carried on."
  3. "The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO be restored."
2. Brief facts of the case are that the assessee is a company and engaged in the business of power generation. During the relevant period under assessment the assessee claimed that it was under the process of setting up Coal based power plant at Orissa. During the set up of process, the assessee earned interest of Rs. 2.65 crore on deposits of margin money with Banks. The assessee reduced the said interest income from capital work-in-progress and

not offered the same for separately for taxation in the return of income. The Assessing Officer treated the said income as Income from Other Sources. On appeal before the Id. CIT(A), the treatment shown by the assessee was accepted and thereby the action of Assessing Officer was reversed. Thus, aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before this Tribunal.

3. We have heard the submission of Id. Departmental Representative (DR) for the revenue and Id. Authorized Representative (AR) of the assessee and gone through the orders of lower authorities.
4. At the outset of hearing, the Id. AR of the assessee submits that the grounds of appeal raised by revenue is squarely covered by the order of Tribunal in favour of assessee in assessee's group case in ACIT vs. Essar Gujarat Power Ltd. in ITA No. 4019 to 4020/Mum/2016 for A.Y. 2011-12 & 2012-13, ITA No. 397/Mum/2018 for A.Y. 2013-14 and also in ACIT vs. Essar Power Transmission Company Ltd in ITA No. 398-399/Mum/2018 dated 06.06.2019. The copies of all the aforesaid decisions are placed on record. The Id. AR of the assessee further submits that similar interest earned by assessee on deposit of margin money was reduced by assessee from capital work-in-progress in A.Y. 2012-13 and the Assessing Officer accepted the same in assessment order passed under section 143(3) dated 3.03.2015, copy of which is placed on record.

5. On the other hand, the Id. DR for the revenue after going through the order of Tribunal relied upon the order of Assessing Officer.
6. We have considered the rival submission of both the parties and perused the order of lower authorities. We have noted that there is no dispute that during the relevant period, the assessee earned interest income on deposit of margin money with Bank. The assessee reduced the interest income from capital work-in-progress (CWIP). The treatment of income so earned was not accepted by Assessing Officer. The Assessing Officer treated the same as Income from 'Other Sources'. The Id. CIT(A) while granting relief to the assessee followed the decision of Hon'ble Supreme Court in CIT vs. Bokaro Steel Ltd. [236 ITR 315 (SC)] and CIT vs. Karnal Co-operative Sugar Mills Ltd. [243 ITR 2(SC), wherein it was held that such interest received partake the character of capital receipt.
7. We have noted that in assessee's group case in ACIT vs. Essar Power Gujrat Ltd.(supra), in ITA No. 4019,4020/Mum/2016, the coordinate bench of Tribunal in order dated 01.06.2018 on identical grounds of appeal passed the following order:

“5.We have heard the rival submissions and perused the material before us. We find that the assessee was setting up a thermal power plant, that during the year under appeal, the project of construction of the power plant was under progress and no commercial activities whatsoever had begun, that all the major expenses incurred in relation to the project were capitalised under 'capital work in progress', that during the year under appeal the assessee had earned interest income out of the funds augmented for issuing bank

guarantee to various parties in connection with the construction of the power projects as well as for meeting the various expenses for purchase of various assets required in the construction of the power plant, that the same was treated as capital asset by the assessee, that it was accordingly reduced from the capital work in progress and was claimed as business income.

In our opinion, 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 has to be capitalised and has to be added to the cost of the fixed assets created as a result of such expenditure. Similarly, if the assessee receives any amount which is inextricably linked with the process of setting up its plant and machinery such receipts will go to reduce the cost of its assets. We also hold that treatment of the receipts depends on the purpose for which the funds are utilised. The use of funds decides the characterisation of the amount.

In the case under consideration that the interest receipt was directly linked to setting up of business apparatus of the assessee. It was not idle money that was invested or parked for earning interest. We have perused the clause 2.4 of Significant Accounting Policies, as appearing in Schedule XI and are of the opinion that the interest income earned by the assessee had direct and intimate connection with its business. Setting of power plants takes time and the assessee has to make investment with banks for availing various facilities.

We find that the FAA had placed reliance on the cases of Bokaro Steel Ltd. (supra), Indian Drugs and Pharmaceuticals Ltd.(supra),Karnal Cooperative Sugar Mills Ltd (supra)and Karnataka Power Corporation. It is found that the judgment of Bokaro Steel(supra)case was followed in the case of Karnal Cooperative Sugar Mills Ltd.(supra),wherein the interest earned by the assessee on amounts deposited with banks to open letters of credit, for purchase of machinery required for setting up its plant, was held to be directly linked with the purchase of plant and machinery and therefore was

held to be a capital receipt on the ground that the same was directly connected and incidental to the construction of plant. We are reproducing a portion of the judgment delivered by the Hon'ble Apex Court in the matter of Karnal Cooperative Sugar Mills Ltd.(supra)wherein the Court, after taking note of the facts of the case, has held as under:

*"...in the present case, the assessee had deposited money to open a letter of credit for the purchase of the machinery required for setting up its plant in terms of the assessee's agreement with the supplier. It was on the money so deposited that some interest had been earned. This was, therefore, not a case where any surplus share capital money which was lying idle had been deposited in the bank for the purpose of earning interest. The deposit of money in the present case was directly linked with the purchase of plant and machinery. Hence, any income earned on such deposit was incidental to the acquisition of assets for the setting up of the plant and machinery. The interest was a capital receipt, which would go to reduce the cost of asset."*

All other cases, cited above, support the view taken by her.

5.1. Considering the above, we are of the opinion that the FAA had rightly held that in the case of interest receipts on margin deposits kept with the banks for the purpose of getting the Credit Facilities which were required for the construction of the plant, it was to be allowed to be reduced from the cost of the plant and was to be held as not taxable. So, confirming her order, we hold that her order does not suffer from any factual or legal infirmity. Effective ground of appeal is decided against the AO.

8. Further, in assessee's group case for same assessee i.e. Essar Power Gujarat Ltd.(supra) for A.Y. 2013-14 on identical grounds, the Tribunal passed the following order:

"8. We have carefully considered the rival submissions. The essential controversy involved in the instant case is whether interest income derived from certain deposits placed with the banks (while the power project construction is under progress and in the process of being set up and has not commenced generating electricity) can be set off against the ongoing power project costs incurred of capital nature and consequently, whether such

interest income would go to reduce project costs prior to its commencement or not. It is the case of the assessee that the AO clearly mis-appreciated the facts and wrongly characterized interest income derived from fixed deposits utilized towards margin money for obtaining bank guarantee in relation to capital project in process and wrongly held such income to be liable to tax as 'income from other sources' under s.56 of the Act. It is further case of the assessee that the CIT(A) has correctly appreciated the facts and applied the law in perspective while holding such interest income to be capital in nature and would consequently go to reduce the power project costs being set up. It is primarily the case of the assessee that the interest income derived from margin money deposits is inextricably linked to the project being set up. Hence, the interest income is required to be regarded as income of capital nature for the purposes of project. We concur with the view taken by the CIT(A) that interest income so earned on deposits placed with Bank to obtain the bank guarantee have been rightly reduced from the project development expenditure incurred for set up of power plant. We note that identical issue came up for consideration of the co-ordinate bench in the case of M/s. Adani Power Rajasthan Ltd. (supra) in a similarly placed situation. We find that the CIT(A) has rightly applied the law laid down by the Hon'ble Supreme Court in Bokaro Steel Ltd. (supra) and Karnal Co-operative Sugar Mills Ltd. (supra). The case in hand is clearly distinguishable from the facts placed before the Hon'ble Supreme Court in Tuticorin Alkali Chemicals & Fertilisers Ltd. (supra). It is not the case where idle and surplus funds have been parked with the banks as fixed deposits pending its utilization in project under progress. It is a case where the fixed deposits giving rise to the interest income has been placed as margin money with the State Bank of India for obtaining bank guarantee for the purposes of the project in progress and consequently, the fixed deposits are integrally connected with the setting up the power plant. The interest income therefore is not independent of the costs incurred for power project. Hence, we find ourselves in complete agreement with the action of the CIT(A) in upholding the action of the assessee to reduce interest income arising from deposits placed with banks out of the costs of project in progress and in reversing the action of the AO in treating

the same as revenue de hors the development of the project. The grievance of the Revenue is bereft of any merit.”

9. Further, on similar grounds, the Co-ordinate Bench in Solarfield Energy Pvt. Ltd. vs. ITO, in ITA Nos. 5189-90/Mum/2016 dated 16.07.2019 passed the following order:

“5. We have considered the submissions of the parties and perused the material on record. We have seen that issue pertaining to addition of interest on fixed deposit with HDFC Bank, is squarely covered the decision of the Tribunal, Solarfield Energy Two Pvt Ltd (supra). We also find that the facts for the year under consideration are pari materia with the facts considered by Tribunal in Solarfield Energy Two Ltd (supra). The coordinate bench of Tribunal in Solarfield Energy Two Pvt Ltd (supra), after considering the judgment of the Hon'ble Supreme Court in the case of [Tuticorin Alkali Chemicals and Fertilizers Ltd vs CIT](#) (1997) 227 ITR 172 (SC), has passed the following order:-

8. We have heard rival contentions and perused the material available on record in the light of decisions relied upon. We have also applied our mind to the decisions relied upon. Undisputed facts are, the assessee was awarded the work of setting-up of Solar Power Plant project in Rajasthan by NWIML. It is also evident; NWNL has entered into a power projects agreement with the assessee on 25th January 2012. As per the terms and conditions stipulated in the bid one of the financial criteria in Request For Selection (RFS) document requires a newly incorporated company to have the required net worth connected to the capacity of the power project. Thus, as per the pre-condition, the assessee was required to have the net worth of Rs. 60 crore. Since, the assessee was not having the required net worth it had to infuse fund for enabling itself to meet the qualification criteria and for this purpose, assessee's parent company KESPPL stepped in and invested fund in acquiring 98,500 equity shares and 1,00,000 compulsorily convertible preference shares of the assessee company, thereby, enabling the assessee to have the required net worth. Thus, as could be seen, the infusion of fund was integrally and inextricably connected with the setting-up of the power project. As evident from the facts on record, out of the funds available with the assessee from issue of equity shares an amount of 40 crore was temporarily parked in fixed deposit with HDFC Bank Ltd. on 1st March 2012, since, wasn't immediately required for implementation of the power project. It is also

evident that the assessee only on 29th May 2012, entered into a EPC contract with Larsen & Toubro Ltd. for developing the 20 MW Solar Photo Voltaic Power Plant. These facts clearly demonstrate, the funds required for setting up of power project was temporarily parked in fixed deposit, thereby, indicating that the interest earned on such fixed deposit has an immediate and proximate nexus with the setting-up of power project. Notably, the Departmental Authorities have rejected assessee's claim that the interest earned is a capital receipt relying upon the decision of the Hon'ble Supreme Court in Tuticorin Alkali Chemicals and Fertilisers Ltd. (supra). On a careful reading of the said judgment, we are of the view that the ratio laid down therein will not apply to the facts of the present case. In the case of Tuticorin Alkali Chemicals and Fertilisers Ltd. (supra), the assessee has borrowed funds for setting up of a plant. However, the surplus fund available out of the borrowed fund was invested in fixed deposit and assessee earned interest. The Department held that the interest earned from fixed deposit on investment of surplus fund during the pre-construction period is assessable as income from other sources. However, the Hon'ble Supreme Court in case of Bokaro Steels Ltd. (supra) took note of the decision In Tuticorin Alkali Chemicals and Fertilisers Ltd. (supra) referred to by the Departmental Authorities. Further, the Hon'ble Supreme Court took note of the decision of the Hon'ble Supreme Court in Challapalli Sugars Ltd. v/s CIT, [1995] 98 ITR 167 (SC) wherein it was held that accepted accountancy rule for determining cost of fixed deposit is to include all expenditure necessary to bring such assets into existence and to pay them in working condition. In case money is borrowed by 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 capitalized and added to the cost of fixed asset created as a result of such expenditure. Following the aforesaid reasoning, the Hon'ble Supreme Court in Bokaro Steels Ltd. (supra) \* held that by applying the same reasoning if the assessee receives any amounts which are inextricably linked with the process of setting-up of plant and machinery such receipts will come to reduce the cost of its assets, hence, are of capital nature. The ratio laid down by the Hon'ble Supreme Court in Bokaro Steels Ltd. (supra) was followed by the Hon'ble Delhi High Court in Indian Oil Panipat Power Consortium Ltd. (supra). The facts of this case are, the assessee a joint venture company was to set-up a power project to effectuate the purpose for which joint venture was created. The joint venture partners contributed share capital which included a sum by way of additional share capital. The said fund, though, was required for purchase of land and development of infrastructure, however, due to legal entanglement with regard to title of land, the funds were temporarily invested in fixed deposit with bank earning interest thereon. The assessee claimed such interest as capital receipt and set it off against pre-operative expenditure. However, the Assessing Officer assessed the interest as income from other sources. The learned Commissioner (Appeals) having found that interest earned was inextricably linked with the setting-up of the power plant allowed the claim of the assessee following the decisions of the Hon'ble Supreme Court in Bokaro Steels Ltd. (supra). However,

while deciding Department's appeal, the Tribunal followed the decision in Tuticorin Alkali Chemicals and Fertilisers Ltd. (supra) and reversed the order of the (earned Commissioner (Appeals), When the matter came up before the High Court, the High Court following the decision of the Hon'ble Supreme Court in Bokaro Steels Ltd. (supra) held that, since, the interest income was inextricably linked to the set-up of power project, it will be a capital receipt and will come to reduce the cost of the project and accordingly allowed assessee's claim. In our view, the ratio laid down in case of Bokaro Steels Ltd. (supra) and Indian Oil Panipat Power Consortium Ltd. (supra) are squarely applicable to the facts of the present case. Undisputedly, in case of assessee, the funds invested temporarily in the fixed deposit were for the purpose of setting-up of the power project. Therefore, the interest earned is inextricably linked with the power project. The other decisions relied upon by the learned Sr. Counsel including the decision in case of CIT v/s Karnal Cooperative Sugar Mills Ltd. (supra) express similar view. That being the case, applying the ratio laid down in the decisions referred to above, we hold that the interest earned on fixed deposit is capital receipt and has to be set-off against pre-operatives expenditure thereby will go to reduce the cost of CWIP. Ground raised is allowed."

6. The issue and the governing facts for the year under consideration are find to be identical to the issue decided by the Tribunal in Solarfield Energy Two Pvt Ltd, a sister concern of the assessee. Therefore, consistent with the view taken by the Tribunal in the case of Solarfield Energy Two Pvt Ltd (supra), we allow the ground raised by the assessee."

10. In view of the aforesaid factual and legal discussion, we are of the view that the interest income earned by assessee from margin money deposit with Bank for availing Bang Guarantee, letter of credit facilities for the purpose of procurement of equipment and other material for setting up of power plant will not partake the character of income from other sources. The interest receipt is inextricably linked to business partakes the character of capital receipt and so rightly allowed to be reduced from WCIP by Id. CIT(A), which we affirmed. Hence, the ground of appeal raised by revenue is dismissed.

11. In the result, appeal of revenue is dismissed.

**ITA No. 1506/Mum/2018 ( Essar Power MP Ltd)**

12. The revenue has raised the identical grounds of appeal as raised in ITA No. 1504/Mum/2018. Facts in the appeal under consideration are almost identical. The assessee earned identical interest income, which was reduced from work-in-progress.

13. Considering our decision in ITA No. 1504/Mum/2018 and respectfully following the same, the appeal under consideration is also dismissed with similar directions.

14. In the result, this appeal is also dismissed.

**ITA No. 1507/Mum/2018 (Essar Power Hazira Ltd)**

15. At the outset of hearing, the ld. AR of the assessee submits that the tax effect involved in the present appeals is less than the monetary limit prescribed by CBDT in its Circular No.17/2019 dated 8<sup>th</sup> August 2019. The ld. AR of the assessee also furnished the working of tax effect of Rs. 40,20,918/-.

16. On the other hand, the ld. Departmental Representative (DR) for the revenue after going through the working of tax effect submits that he may be given liberty to verify the tax effect in the grounds of appeal raised before the Tribunal.

17. We have considered the submission of both the parties and perused the record. After perusal of record, we are in agreement with the submission of ld. AR of the assessee that tax effect involved in the present appeal is only

Rs. 40,20,918/-. Therefore, keeping in view the instruction of CBDT Circular No. 17/2019 dated 8<sup>th</sup> August 2019, wherein the revenue is precluded from filing appeal before the Tribunal, wherein the tax effect is less than Rs. 50,00,000/-. Hence, the appeal filed by revenue is dismissed. However, the ld. DR for the revenue is given liberty to get the appeal revived in case if it is discovered at the later stage that tax effect involved in the present appeal is more than the monetary limit prescribed by CBDT Circular No. 17/2019 dated 8<sup>th</sup> August 2019.

18. In the result, all the appeals of the revenue are dismissed.

Order pronounced in the open court on 03/10/2019 while hearing the appeals.

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**  
Mumbai, Date: 03.10.2019  
SK

Copy forwarded to:

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

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

BY ORDER  
Assistant Registrar  
ITAT Mumbai