

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

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

**ITA No. 2948/DEL/2018 ( A.Y 2013-14)**

M/S Triumph Realty (P) Ltd. The Grand Hotel Gate No.4, Plot No-2 Nelson Mandela Road, Vasant Kunj, Phase-II New Delhi-110070 <b>PAN: AACCT8092L</b> <b>(APPELLANT)</b>	Vs	ITO Ward-25(4) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Vinod Bindal, CA</b>
<b>Respondent by</b>	<b>Sh. Saras Kumar, Sr DR</b>

<b>Date of Hearing</b>	<b>15.07.2020</b>
<b>Date of Pronouncement</b>	<b>27.08.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 15/01/2018 passed by CIT(A)-9, New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

*“1. The learned CIT(A) erred in law and on facts in holding the interest of Rs. 6,55,69,400/- earned on FDRs as “income from other sources” ignoring the facts that the hotel of the assessee is under construction and business of the assessee has not commenced and the funds on which interest was earned were inextricably linked to the setting up of the Hotel and thus the said*

*interest income has been netted off against the interest paid by the assessee and also ignoring the submissions and evidences placed on record. Thus the addition so made should be deleted.*

3. The assessee is a company running a five star hotel in Goa. During the year under consideration, the hotel of the assessee was in process of construction. The assessee has taken an ECB for funding the said construction and which was parked in the FDRs during the year. The assessee has deducted interest earned on FDR at Rs. 6.49 crores as per the balance sheet and netted the Financial cost at Rs. 7.33 crores. The Assessing Officer observed that the interest earned on FDR amounting to Rs. 4,49,34,958/- has not been shown as income under the head "Income from Other Sources" as per Section 56 of the Income Tax Act, 1961. Whereas, as per the 26AS, the assessee received interest amounting to Rs. 6,55,69,400/-. The Assessing Officer after considering the reply and documents of the assessee made an addition of Rs. 6,55,69,400/- by holding the interest earned on FDRs as 'income from other sources.'

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

5. The Ld. AR submitted that in the earlier year for Assessment Year 2012-13, the facts were identical and the Tribunal has decided the appeal of the assessee in favour of the assessee vide order dated 29/11/2019 being ITA No. 6597/Del/2016. The Ld. AR submitted that the Assessing Officer erred in law and on facts in considering the interest of Rs 6,55,69,400/-earned on FDRs during the period, when the hotel of the assessee is under construction and business of the assessee has not commenced, as "income from other sources" ignoring the fact that the said interest income has been netted off against the interest paid by the assessee and the submissions and evidences placed on record. Thus the Ld. AR prayed that the addition so made should be deleted.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The Tribunal in assessee's own case for Assessment Year 2012-13 being ITA No. 6597/Del/2016 dated 29.11.2019 held as under:

6. *“After hearing both the parties and on perusal of the material placed on record and the judgments relied upon by the Id. counsel, we find that it is undisputed fact and even accepted by the Assessing Officer that the assessee has taken Foreign ECB loan of Rs.82.37 crores for the purpose of acquisition of a capital asset, i.e., renovation and refurbishment of hotel acquired by the assessee under SARFEASI Act from SBI, Mumbai. The entire ECB loan was disbursed in a single trench in the year under consideration and till this year, the assessee could utilize only Rs.33.70 crores and was considered in the capital WIP. The assessee has temporarily parked the ECB loan in FDRs till utilization for fixed asset/capital expenditure strictly in compliance with the RBI instruction. The assessee had paid interest amount of Rs. 13.38 crores and has earned interest on FDRs of Rs.4.03 crores. The net amount of interest of Rs.9.35 crores has been added to the preoperative expenditure pending capitalization, i.e. in capital WIP. There is no quarrel that the interest paid on ECB loan has been capitalized. Way back in the year 1974, Hon'ble Supreme Court in the case of **Challapalli Sugars Ltd. vs. CIT, 98 ITR 167 (SC)** had examined the question whether interest paid before commencement of production by a company on the amount borrowed for acquisition, installation of plant and machinery would form part of actual cost of the asset, assessee will be entitled to depreciation allowance and development rebate with reference to such interest also. Their Lordships held that if assessee has received any amount which is inextricably linked with the setting up of plant and machinery, then such receipt will only go to reduce the cost of fixed asset. This principle was followed by Hon'ble Supreme Court in the case of Bokaro Steel Ltd. (supra) and also in the cases of CIT vs. Karnal Cooperative Sugar*

*Mills Ltd.(supra) and CIT vs. Karnataka Power Corporation (supra). The id. Assessing Officer has relied upon the judgment of Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd.(supra) to tax the interest earned on FDRs as income from other sources on the facts of the present case. This precise issue had come up in the case of Indian Oil Panipat Power Consortium Ltd. (supra), wherein explaining the principle laid down in the decision of Tuticorin Alkali Chemicals and Fertilizers Ltd., Bokaro Steel Ltd. and Challapalli Sugars Ltd. (supra), the Hon'ble Jurisdictional Court held that the test which permeates through the judgment in Tuticorin Alkali Chemicals (supra) is that, if funds have been borrowed for setting up of a plant and if the funds are surplus and then by virtue of that circumstance they are invested in fixed deposits, the income earned in the form of interest will be taxable under the head 'income from other sources'. On the other hand, the ratio of Supreme Court judgment in Bokaro Steel Ltd. (supra) is that if income is earned whether by way of interest or in any other manner or the funds, which are otherwise inextricably linked with setting up of a plant, such income is required to be capitalized to be set off against preoperative expenses."*

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8. *The sequitor of the judgment of Hon'ble Supreme Court and Hon'ble jurisdictional High Court is that if the funds have been raised for the purpose of setting up of a plant or acquisition of capital asset then the funds have to be inextricably linked with the activities of the plant and if such funds have been put in FDRs, then interest received will be a capital receipt and cannot be taxed as income from other sources. Respectfully following the aforesaid principle, which is applicable on the facts of the present case also, we hold that once the ECB loan which is to be utilized for capital expenditure only, then, any interest earned on funds temporarily parked in FDRs is inextricably linked with the setting up of hotel of the assessee, which is to be held as capital receipts only and is permitted to be set off against the capital expenditure. The decision of CIT (A) is in line with the judicial precedence and*

*therefore, the impugned order of the Id. CIT (A) is upheld. Consequently, the appeal of the Revenue is dismissed.*

In this particular year also, the interest on FDRs during the period has been netted off against interest paid by the assessee which is identical to the fact of earlier Assessment Year 2012-13. There is no change in the circumstances in this year. Therefore, the CIT(A) was not correct in confirming the addition by taking different opinion from the earlier A.Y. 2012-13 taken by the earlier CIT(A). It is pertinent to note that once the ECB loan which is to be utilized for capital expenditure only, then, any interest earned on funds temporarily parked in FDRs is inextricably linked with the setting up of hotel of the assessee, and the same should be held as capital receipts only and is permitted to be set off against the capital expenditure as per the provisions of Income Tax Act. The order of the CIT(A) is set aside. Hence, appeal of the assessee is allowed.

8. In result, the appeal of the assessee is allowed.

**Order pronounced in the Open Court on this 27<sup>th</sup> Day of August, 2020.**

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

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

Dated: 27/08/2020  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI