

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

**(THROUGH VIRTUAL COURT),**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.54 & 55/ALLD/2020**

**Assessment Years: 2015-16 & 2016-17**

|                                                                                                       |    |                                                      |
|-------------------------------------------------------------------------------------------------------|----|------------------------------------------------------|
| M/s Meja Urja Nigam Pvt. Ltd.,<br>5 <sup>th</sup> Floor, Sangam Place, Civil<br>Lines, Allahabad,U.P. | v. | Income Tax Officer,<br>Ward-2(2),<br>Allahabad, U.P. |
| PAN:AAFCEM 8107L                                                                                      |    |                                                      |
| (Appellant)                                                                                           |    | (Respondent)                                         |

|                        |                             |
|------------------------|-----------------------------|
| Revenue by:            | Shri Parv Agrawal, CA       |
| Assessee by:           | Ms.Namita S. Pandey, CIT DR |
| Date of hearing:       | 24.02.2021                  |
| Date of pronouncement: | 09.03.2021                  |

**ORDER**

**PER Bench:**

These two appeals, filed by assessee, being ITA Nos. 54 & 55/Alld/2020 for assessment year's(ay's) : 2015-16 and 2016-17 respectively are directed against two separate appellate orders both dated 24.10.2019 in appeal no. CIT(A), Allahabad/10377/2017-18 for ay:2015-16 and CIT(A), Allahabad/10448/2018-19 for ay:2016-17 , both passed by learned Commissioner of Income-tax (Appeals), Allahabad, U.P. (hereinafter called " the CIT(A)") . The appellate proceedings had arisen before Id. CIT(A) from two separate assessment orders dated 29.12.2017 and 30.12.2018 for ay: 2015-16 and 2016-17 respectively, both passed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter called "the Act") by learned Assessing

Officer(hereinafter called “ the AO”) . We have heard both the parties through video conferencing mode through virtual court.

2. The grounds of appeals raised by assessee in its appeal in ITA No. 54/Alld/2020 for ay : 2015-16 and ITA No. 55 /Alld/2020 for ay 2016-17 respectively, in memo of appeal(s) filed with Income-Tax Appellate Tribunal, Allahabad (hereinafter called “ the tribunal”) , reads as under :

**ITA no. 54/Alld/2020 for AY:2015-16**

- “1. The Id. CIT(A) has erred in upholding the addition of Rs. 6,80,71,611 received as interest from banks during the construction period which is in the nature of capital receipt because it pertains to a period when the business of the assessee has not yet commenced and therefore it was liable to be adjusted against pre operative expenses reducing the cost of the project. The same was rightly set off against the interest paid on term loans by the assessee.*
- 2. The Id.. CIT(A) has erred in making the addition of Rs. 1,49,85,443 received as interest on advances given to contractors for construction work because the said receipts are inextricably linked with plant set up activities and hence is in the nature of Capital Receipt and are being set off against Expenditure during construction period. This activity was rather a part and parcel of the constructional activities of the assessee. The source is not independent of, but is rather closely connected and interlinked to the process of setting up of the factory,*
- 3. The Id. Commissioner of Income-tax (Appeals) has erred in law and on facts in upholding the addition of Rs. 3,33,000, being forfeiture of earnest money and other miscellaneous recoveries from contractors, as income from other sources because the said receipts are inextricably linked with plant set up activities and hence is in the nature of Capital Receipt and are being set off against Expenditure during construction period. This activity was rather a part and parcel of the constructional activities of the assessee. The source is not independent of, but is rather closely connected and interlinked to the process of setting up of the factory.*
- 4. The learned CIT(Appeals) has erred in upholding the addition, since the assessee has earned income before commencement of the business of the assessee, it was to be capitalized and the assessee accordingly*

*treated the receipt as capital receipt and adjusted against expenses reducing the cost of the project*

5. *The learned CIT(Appeals) has committed a grave error of law in not appreciating the case laws cited by the assessee, which not only squarely covers the controversy but were also binding upon him.*
6. *The order passed by the CIT(A) is in teeth of the law laid down by the jurisdictional ITAT in assessee's own case for the A.Y. 2012-13 as well as in the case of ITO vs Prayagraj Power Generation Company Ltd (ITA NO.618 & 619/LKW/2013)*
7. *The learned CIT(A) has committed a grave error of law in not following the order of the jurisdictional bench of ITAT in assessee's own case on the same issue for other assessment years, when it is an admitted fact that the said order of ITAT has neither been stayed nor set aside by the High Court. The learned CIT(A) has transgressed its power in terming the order of ITAT as wrong."*

**ITA No. 55/Alld/2020 for AY:2016-17**

- “1. *The Id. CIT(A) has erred in upholding the addition of Rs. 3,24,20,976 received as interest from banks during the construction period which is in the nature of capital receipt because it pertains to a period when the business of the assessee has not yet commenced and therefore it was liable to be adjusted against pre operative expenses reducing the cost of the project. The same was rightly set off against the interest paid on term loans by the assessee.*
2. *The Id. CIT(A) has erred in making the addition of Rs. 6,39,33,174 received as interest on advances given to contractors for construction work because the said receipts are inextricably linked with plant set up activities and hence is in the nature of Capital Receipt and are being set off against Expenditure during construction period, This activity was rather a part and parcel of the constructional activities of the assessee. The source is not independent of, but is rather closely connected and interlinked to the process of setting up of the factory,*
3. *The Id. Commissioner of Income-tax (Appeals) has erred in law and on facts in upholding the addition of Rs. 7,85,000 and Rs.82,98,814, being forfeiture of earnest money and other miscellaneous recoveries from contractors, as income from other sources because the said receipts are inextricably linked with plant set up activities and hence is in the*

*nature of Capital Receipt and . are being set off against Expenditure during construction period. This activity was rather a part and parcel of the constructional activities of the assessee. The source is not independent of, but is rather closely connected and interlinked to the process of setting up of the factory.*

- 4. The learned CIT(Appeals) has erred in upholding the addition, since the assessee has earned income before commencement of the business of the assessee, it was to be capitalized and the assessee accordingly treated the receipt as capital receipt and adjusted against expenses reducing the cost of the project*
- 5. The learned CIT(Appeals) has committed a grave error of law in not appreciating the case laws cited by the assessee, which not only squarely covers the controversy but were also binding upon him.*
- 6. The order passed by the CIT(A) is in teeth of the law laid down by the jurisdictional ITAT in assessee's own case for the A.Y. 2012-13 as well as in the case of ITO vs Prayagraj Power Generation Company Ltd (ITA N0.618 & 619/LKW/2013)*
- 7. The learned CIT(A) has committed a grave error of law in not following the order of the jurisdictional bench of ITAT in assessee's own case on the same issue for other assessment years, when it is an admitted fact that the said order of ITAT has neither been stayed nor set aside by the High Court. The learned CIT(A) has transgressed its power in terming the order of ITAT as wrong."*

3. In both these appeals for ay: 2015-16 and 2016-17 , common issues are involved and hence both these appeals were heard together and are disposed of by common order passed by the Tribunal.

4. Both these appeals are filed with tribunal late beyond the time stipulated u/s 253(3) of the 1961 Act, late by 48 days as is prescribed under the statute. The assessee has filed an application before the tribunal for condonation of delay of 48 days supported by an affidavit, and prayers are made to condone the delay in filing of these appeals late by 48 days beyond the time prescribed u/s 253(3) of the 1961 Act. The assessee is a Public Sector Undertaking. The assessee has explained in its

aforesaid application / affidavit that the assessee after receiving impugned order(s) passed by Id. CIT(A) , keeping in view gravity of matter and multiplicity of proceedings involved in the appeal(s) referred the same to its Head Office at New Delhi , for seeking legal opinions from legal experts, which has led to delay in filing of these two appeals with the tribunal and prayers are made to condone the delay in filing of these two appeals. The Revenue on the other hand objected to the condonation of delay. After considering the entire matter on record and after hearing both the parties, we hereby condone the delay of 48 days in filing these two appeals by assessee late beyond the time stipulated u/s 253(3) of the 1961 Act. Whence technicalities are pitted against substantial justice, the Courts will lean towards substantial justice as against technicalities unless malafide on the part of tax-payer is at writ large , which in the instant case we find no malafide on the part of the assessee in filing these appeals late with tribunal by 48 days beyond the time provided u/s 253(3) of the 1961 Act. The assessee has shown sufficient cause in filing of these appeals late by 48 days. The assessee being Public Sector undertaking, with a corporate entity having head office at New Delhi , some delay in processing and seeking legal advice on complicated issues can be reasonably foreseeable and this explanation cannot be discarded at threshold, hence we accept bonafide in these two appeals filed by the assessee late beyond the time provided u/s 253(3) of the 1961 Act. The tax-payers are ordinarily not going to gain by delaying the filing of appeal late. So, if the doors of justice are shut to taxpayers at threshold at the stage of admission of appeal on the grounds of technicalities such as filing of appeal late by few days, the cases with bonafide delays , will have irreparable loss to the tax-payers, but once the delay in filing the appeal is condoned, then at best the appeal will be decided on merits of the case and Revenue in any case is not going to lose if the issues are decided on merits. Thus, keeping in view factual matrix of the instant case before us, we condone the delay in filing of the appeal(s) late by assessee by 48 days beyond the time stipulated u/s 253(3) of the 1961 Act and admit both these appeals for ay:

2015-16 and 2016-17 respectively, to be now adjudicated on merits. We order accordingly.

**ITA No. 54/Alld/2020- Assessment Year- 2015-16**

5. The brief facts of the case are that the assessee is a Public Sector Undertaking which was set up and incorporated on 02.04.2008 , as a joint venture of NTPC Ltd. and UP RUVN Ltd. and was engaged in setting up of a power generation plant in the name of Meja Urja Nigam (P) Ltd. The assessee has not commenced commercial production during the impugned assessment year. The assessee has filed a letter dated 30.04.2019(signed on 01.05.2019) of Northern Regional Power Committee, Ministry of Power, Government of India addressed to Central Electricity Authority , whereby it has taken on record assessee letter no. MUNPL/COD/Unit-1 dated 24.04.2019 declaring that Unit-1(660MW) of Meja Thermal Power Station Stage-1(2X660MW) is declared on commercial operation w.e.f. 00.00Hrs. of 30.04.2019 and claim has been made that the assessee has not yet commenced commercial operations during the impugned assessment years . The said letter dated 30.04.2019(signed on 01.05.2019) of Northern Regional Power Committee, Ministry of Power, Government of India addressed to Central Electricity Authority is placed in file on record.

6. There are three issues which has arisen for our consideration in ay: 2015-16. The first issue is with respect to interest earned by assessee on bank deposits to the tune of Rs.6,80,71,611/- , second issue is with respect to interest income of Rs.1,49,85,443/- earned from IVRCL & MG Contractors for advance paid for execution of certain work( enhancement of income by ld. CIT(A) ) and the last issue is with respect to forfeiture by assessee of earnest money advanced by contractors to assessee, on account of non completion of work . The assessee has deducted all the three aforesaid receipts from the expenditure during construction period , and has

filed return of income showing 'Nil' Income . The ld. CIT(A) has decided all the aforesaid three issue(s) against the assessee including enhancement of income with respect to interest income from advances to Contractors , and hence the assessee being aggrieved has come in appeal before the Tribunal. At the time of hearing before the Bench , both the ld. counsel as well as ld. CIT. DR brought to the notice of the Bench, that the tribunal has recently passed an appellate order(s) dated 29.01.2021 in ITA No. 175/Alld/2018 for ay: 2013-14 in an appeal filed by assessee , and appellate order in ITA No. 80 & 177/Alld/2018 for ay's: 2013-14 & 2014-15 respectively with respect to appeals filed by Revenue for ay: 2013-14 and 2014-15 respectively, and it is claimed that the issues are covered by the decision of tribunal. The aforesaid common orders dated 29.01.2021 for ay: 2013-14 and 2014-15 were passed by Division Bench , of which both of us viz. ld. Judicial Member and ld. Accountant Member were part of the DB who pronounced the aforesaid orders on 29.02.2021. It is also brought to our notice by ld. CIT-DR that the contentions raised by assessee that the bank is debiting the amount lying in current account to deposit accounts of its own without any direction of the assessee , was infact done by the bank because the assessee itself has taken a positive step by issuing standing instructions to the bank and then it cannot be said that the bank is creating bank deposits of its own without intervention of the assessee, which aspect must also be looked by ld. CIT(A) while adjudicating afresh the issues with respect to interest income earned from bank deposits, in denovo proceedings at the behest of the tribunal.

7. We have gone through the facts as emanating from the assessment order as well as appellate order passed by ld. CIT(A)'s order and we have observed that the first issue related to interest income earned by assessee from bank deposits is covered by decision of tribunal in Revenues appeal for ay: 2013-14 and 2014-15 in ITA No.80 & 177/Alld./2018 , dated 29.01.2021. In our considered view, the same

decision shall be applicable so far as first issue of interest income on bank deposit to the tune of Rs. 6,80,71,611/- is concerned , wherein the tribunal has vide orders dated 29.01.2021, held as under:

*“8. We have heard both the parties through Video Conferencing and perused the material on record. We have observed that the assessee is a Public Sector undertaking which was setup and incorporated on 02.04.2008 as a joint venture company of NTPC Limited and of UP RUVN Ltd. and was engaged in setting up of a power generation plant in the name of Mija Urja Nigam (P) Ltd. . The assessee has undisputedly not commenced commercial operations during the impugned assessment year. We have observed that the assessee has earned income from interest to the tune of Rs. 1,67,02,568/- on deposits with banks. We have observed that the assessee has claimed the same to be set off against interest paid on terms loans availed for setting up of the power generation plant and hence reduction from pre-operative expenses for setting up the project was sought instead of offering the said interest income from bank deposit to tax under the provisions of 1961 Act. The AO brought the said interest income earned on bank deposit to income- tax u/s 56 of the 1961 Act and rejected the contentions of the assessee to set off the said interest income on bank deposits against the interest paid on term loans availed for setting up of power plant. The AO relied upon provisions of Section 5 of the 1961 Act and Hon’ble Supreme Court decision in the case of Tuticorin Alkali Chemicals and Fertilizers Limited(supra) while rejecting the contentions of the assessee and bringing to tax interest income earned on bank deposits under the head ‘Income from other sources’ under the provisions of Section 56 of the 1961 Act. The ld. CIT(A) while adjudicating appeal filed by assessee granted relief to the assessee by following decision of tribunal in assessee’s own case for earlier years viz. ay: 2009-10 and 2010-11. The ld. CIT(A), thus, followed appellate order dated 16.08.2017 passed by tribunal in assessee’s own case for ay’s: 2009-10 and 2010-11, in ITA No. 44/Alld/2014 and ITA No. 85/Alld./2016 respectively. We have gone through the appellate order passed by tribunal in assessee’s own case for ay’s: 2009-10 and 2010-11 and we have observed that in those assessment year’s, the tribunal had observed peculiar facts prevailing in those years and has observed that the assessee was setting up a power plant activities like land acquisition, statutory clearances, development of infrastructure , but the business activities of the assessee has not yet been started in both those years viz. ay’s: 2009-10 and 2010-11. It was further observed by tribunal that interest was not earned by assessee on 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. It was observed by tribunal that for ay’s: 2009-10 and 2010-11 , funds were kept by assessee in*

current account and was used for ongoing construction activity as and when required. The tribunal observed peculiar facts that the assessee kept the funds in current account and it was the Bank who was transferring funds in short term MODs(deposits) account in accordance with terms and conditions of the account , which were not the facts in the case before Hon'ble Supreme Court in the case of CIT v. Bokaro Steel Ltd. [1999] 102 Taxman 94 (SC) . The tribunal further observed that these short term MODs created by Bank were reversed automatically by the bank as and when the assessee withdraw the amount from the account and there was no intention on the part of the assessee to earn any interest on such fund. The tribunal had further observed that the funds were kept in liquid so as to use them as and when required , since , the interest income on short term MOD's were inextricably linked to the construction and acquisition activities in the regular course of the assessee's activities. The tribunal further observed that the interest income was not earned by the assessee out of surplus funds so as to treat the said income as income from other sources. The tribunal has also considered decision of Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) and also decision of Hon'ble Apex Court in the case of CIT v. Bokaro Steel Ltd. [1999] 102 Taxman 94 (SC) , and then the claim of the assessee was allowed for both the years by tribunal, by holding as under:

"We have heard both the parties and perused the material available on record. 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 both the Assessment Years 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 CIT(A) relied upon the case of Bokaro Steel, but the same is not transferred by the bank in short term MODs Accounts in accordance with the account terms and conditions. The said MODs were reversed automatically as and when the assessee withdrew the amounts From account. There was no intention to earn any interest on such funds. The funds were kept in liquid so as to use them as and when required, since, the interest on short term MODs were inextricably link to the construction and

*acquisition activities in the regular courses of the assessee's activities. The interest was not earned out of the surplus funds so to treat the said income as income from other source is not justified. This claim of the assessee sustains because the equity contribution by the Joint Venture partners cannot be termed as surplus funds because it was having a short term MODs as per the requirement of day to day construction activities of the assessee. Therefore, the Assessing Officer as well as the CIT(A) over looked these aspects and simply without taking cognizance of the correct fact of the present case relied upon the judgments of Apex Court in Tuticorin Alkali Chemicals and Fertilizers Ltd. and Bokaro Steel wherein the facts were different. The facts are similar in both the Assessment years therefore, the appeals are allowed in both the years."*

*Thus, as could be seen above, these appeals for ay's: 2009-10 and 2010-11 were decided by tribunal on peculiar facts prevailing in those years We have observed that every assessment year is a separate assessment year and principles of res-judicata are not strictly applicable, but we are also fully aware that consistency has to be followed. The reference is made to the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT reported in (1992)193 ITR 321(SC). We have observed that Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (Supra) has observed that even during the period when commercial production has not started but the funds were invested in the bank FDR etc. the interest income has to be brought to income-tax under provisions of Section 56 of the 1961 Act under the head 'Income from other sources', and setoff cannot be allowed against interest on term loans secured by tax-payer from Financial Institutions which would be capitalized after the commencement of commercial production. The decision of Hon'ble Supreme Court in the case of Tuticorin (supra) is reproduced hereunder:*

*"7.....In view of the aforesaid conflict of decisions between the Madras and the Andhra Pradesh High Courts, the Tribunal has referred the following question of law to this Court for decision:*

*"Whether, on the facts and in the circumstances of the case, interest derived by the assessee from the borrowed funds which were invested in short-term deposits with banks would be chargeable to tax under the head 'Income from other sources' or would go to reduce the interest payable by the assessee on the term loans secured by the assessee from financial institutions, which would be capitalised after the commencement of commercial production?"*

**8.** *The facts of this case are not in dispute. In the usual course, interests received by the company from bank deposits and loans would be taxable as income under the head 'Income from other sources' under section 56 of the Income-tax Act, 1961 ('the Act'). It is argued on behalf of the company that it had not yet commenced its business and in any*

event the income was derived from funds borrowed for setting up the factory of the company and should be adjusted against the interest payable on the borrowed funds.

**9.** In our judgment neither of the two factors can affect taxability of the income earned by the company. Under the Act, the total income of the company is chargeable to tax under section 4 of the Act. The total income has to be computed in accordance with the provisions of the Act. Section 14 of the Act lays down that for the purpose of computation, income of an assessee has to be classified under six heads:

- (A) Salaries.
- (B) Interest on securities.
- (C) Income from house property.
- (D) Profits and gains of business or profession.
- (E) Capital gains.
- (F) Income from other sources.

**10.** By an amendment made in 1988, 'interest on securities' has been made chargeable to tax as business income when such interest forms part of business profits and in all other cases under section 56(2)(id) as income from other sources. The amendment made in 1988 has no relevance for the purpose of this case. We shall take this Act as it stood at the material time in the assessment year 1983-84.

**11.** The computation of income under each of the above six heads will have to be made independently and separately. There are specific rules of deduction and allowances under each head. No deduction or adjustment on account of any expenditure can be made except as provided by the Act.

**12.** The basic proposition that has to be borne in mind in this case is that it is possible for a company to have six different sources of income, each one of which will be chargeable to income-tax. 'Profits and gains of business or profession' is only one of the heads under which the company's income is liable to be assessed to tax. If a company has not commenced business, there cannot be any question of assessment of its profits and gains of business. That does not mean that until and unless the company commences its business, its income from any other source will not be taxed. If the company, even before it commences business, invests the surplus fund in its hand for purchase of land or house property and later sells it at profit, the gain made by the company will be assessable under the head 'Capital gains'. Similarly, if a company purchases a rented house and gets rent, which rent will be assessable to tax under section 22 of the Act as income from house property. Likewise, a company may have income from other sources. It may buy shares and get dividends. Such dividends will be taxable under section 56. The company may also, as in this case, keep the surplus fund in short-term deposits in order to earn interest. Such interest will be chargeable under section 56.

**13.** The company has chosen not to keep its surplus capital idle, but has decided to invest it fruitfully. The fruits of such investment will clearly be of revenue nature. This position in law was explained by Sir George Lowndes in the oft-quoted passage in the case of *CIT v. Shaw Wallace & Co.* [1932] [59 LA. 206]:

*"Income, their Lordships think, in this Act connotes a periodical monetary return 'coming in' with some sort of regularity or expected regularity from definite*

*sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. This income has been linked pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something, which is often loosely spoken of as 'capital'."*

**14.** *In other words, if the capital of a company is fruitfully utilised instead of keeping it idle, the income, thus, generated will be of the revenue nature and not accretion of capital. Whether the company raised the capital by issue of shares or debentures or by borrowing will not make any difference to this principle. If borrowed capital is used for the purpose of earning income, that income will have to be taxed in accordance with law. Income is something which flows from the property. Something received in place of the property will be capital receipt. The amount of interest received by the company flows from its investments and is its income and is clearly taxable even though the interest amount is earned by utilising borrowed capital.*

**15.** *It is true that the company will have to pay interest on the money borrowed by it. But that cannot be a ground for exemption of interest earned by the company by utilizing the borrowed funds as its income. It was rightly pointed out in the case of Kedar Narain Singh v. CIT [\[1938\] 6 ITR 157 \(All.\)](#) that 'anything which can properly be described as income is taxable under the Act unless expressly exempted'. The interest earned by the assessee is clearly its income and unless it can be shown that any provision like section 10 has exempted it from tax, it will be taxable. The fact that the source of income was borrowed money does not detract anything from the revenue character of the receipt. The question of adjustment of interest payable by the company against the interest earned by it will depend upon the provisions of the Act. The expenditure would have been deductible as incurred for the purpose of business if the assessee's business had commenced. But that is not the case here. The assessee may be entitled to capitalise the interest payable by it. But what the assessee cannot claim is adjustment of this expenditure against interest assessable under section 56. Section 57 of the Act sets out in its clauses (i) to (iii) the expenditures which are allowable as deduction from income assessable under section 56. It is not the case of the assessee that the interest payable by it on term loans is allowable as deduction under section 57.*

**16.** *If that be so, under which other provision of law, can the assessee claim deduction or set-off of his income from other source against interest payable on the borrowed fund?*

**17.** *There are specific provisions in the Act for setting off of loss from one source against income from another source under the same head of income (section 70), as well as setting off of loss from one head against income from another (section 71). In the facts of this case, the company cannot claim any relief under any of these two sections, since its business had not started and there could not be any computation of business income or loss incurred by the assessee in the relevant accounting year. In such a situation, the expenditure incurred by the assessee for the purpose of setting up its business cannot be allowed as deduction, nor can it be adjusted against any other income under any other head. Similarly, any income from a non-business source cannot be set off against the liability to pay interest on funds borrowed for the purpose of purchase of plants and machineries even before commencement of business of the assessee.*

**18.** *It has been argued that the source from which the company has earned interest is borrowed capital. The company has to pay interest to its creditors on the same borrowed capital. Having regard to the identity of the fund on which interest is earned and interest*

*is payable, the company should be allowed to set off its income against interest payable by it on the same fund. We are of the view that no adjustment can be allowed except in accordance with the provisions of the Act. However desirable it may be from the point of view of equity, this adjustment cannot be made unless the law specifically permits such adjustment.*

**19.** *Next it has been argued that according to well-established accountancy practice, the interest earned by the company even before commencement of business from investing borrowed capital will have to be set off against interest payable by the company on that borrowed capital. The argument based on accountancy practice has little merit if such practice cannot be justified by any provision of the statute or is contrary to it.*

**20.** *In the case of B.S.C. Footwear Ltd. v. Ridgway (Inspector of Taxes) [1972] 83 ITR 269 (HL), Russell, L.J., while rejecting an argument based on well-settled accountancy practice, pointed out that the Income-tax Law does not march step by step in the divergent footprints of the accountancy profession.*

**21.** *The view of Russell, L.J. was upheld by the House of Lords on appeal. It was observed by Lord Reid:*

*"Whatever merits there may be in the company's accountancy methods for the purposes of its internal affairs I am not persuaded that Cross, J. and the Court of Appeal were wrong in finding them unacceptable for tax purposes." (p. 283)*

*In the case before us, the company had surplus funds in its hands. In order to earn income out of the surplus funds, it invested the amount for the purpose of earning interest. The interest, thus, earned is clearly of the revenue nature and will have to be taxed accordingly. The accountants may have taken some other view but accountancy practice is not necessarily good law. In B.S.C. Footwear Ltd. 's case (supra), the House of Lords had no hesitation in holding that the accounting practice for calculating its profit followed by the assessee and accepted by the revenue for 30 years could not be treated as sanctioned by law and was not acceptable for the purpose of computation of taxable income.*

**22.** *There is another aspect of this matter. The company, in this case, is at liberty to use the interest income as it likes. It is under no obligation to utilise this interest income to reduce its liability to pay interest to its creditors. It can re-invest the interest income in land or shares, it can purchase securities, it can buy house property, it can also set up another line of business, it may even pay dividends out of this income to its shareholders. There is no overriding title of anybody diverting the income at source to pay the amount to the creditors of the company. It is well-settled that tax is attracted at the point when the income is earned. Taxability of income is not dependent upon its destination or the manner of its utilisation. It has to be seen whether at the point of accrual, the amount is of the revenue nature. If so, the amount will have to be taxed - Pondicherry Railway Co. Ltd. v. CIT AIR 1931 PC 165.*

**23.** *Our attention was drawn to two other decisions where the view of the Andhra Pradesh High Court was followed. In the case of CIT v. Electrochem Orissa Ltd. [\[1995\] 211 ITR 552](#), the Orissa High Court preferred the view expressed by the Andhra Pradesh High Court to the view expressed by the Madras High Court in Seshasayee Paper & Boards Ltd's case (supra) on the ground that the Madras High Court case was based on a finding of fact that there was no direct connection between the interest paid and the interest received. In our view it will not be right to read the judgment in Seshasayee Paper & Boards Ltd. 's case (supra) in that way. The Court's finding in Seshasayee Paper & Boards Ltd. 's case (supra) was that the interest earned by the assessee from the bank deposits had to be*

assessed under the head Income from other sources'. Consequently, the interest paid on the borrowings for the purpose of purchase of plants and machineries could not be allowed or adjusted against this income under section 57(iii) nor were such adjustments permissible under section 70 or 71 of the Act because the business of the assessee had not commenced. The Madras High Court categorically held:

*"... In this case, admittedly, the borrowing has not been made exclusively and solely for the purpose of earning interest in which case alone it should be taken as an income which should be deducted from the interest receipts." (p. 549)*

**24.** An assessee-company may have raised its capital by issue of shares or debentures or by borrowing. But when that capital or a portion of it was utilised for whatever reason, even for a short period, to earn interest that interest must be treated as the revenue receipt and will have to be taxed accordingly. Any set off or deduction of any expenditure can only be made in accordance with the provisions of the Act.

**25.** The other case is a decision of the Bombay High Court in *CIT v. Maharashtra Electros melt Ltd* [\[1995\] 214 ITR 489](#) . In that case, the assessee, before commercial production had started, had realised a sum of Rs. 3,14,356 as interest on short-term deposit. At the same time, the assessee had paid a sum of Rs. 58,51,505 as interest on funds borrowed by it for the purpose of its business. The assessee after deducting the receipt of interest from the amount of interest paid by it capitalised the balance amount. The High Court was of the view that the background of raising of the fund by borrowing and temporary utilisation of a portion of that fund by keeping the same in call deposits with the banks went to show that the interest was earned for the purpose of reducing the liability of the assessee. The High Court came to the conclusion that it was evident that the assessee did not derive any income by temporary utilisation of the loans and since no income was derived by the assessee, the question of assessing the sum of Rs. 3,14,366 in the hands of the assessee as 'income from other sources' did not arise.

**26.** It is difficult to follow this reasoning. If a person borrows money for business purpose but utilises that money to earn interest, however, temporarily, the interest so generated will be his income. This income can be utilised by the assessee whichever way he likes. He may or may not discharge his liability to pay interest with this income. Merely because it was utilised to repay the interest on the loan taken by the assessee, it did not cease to be his income. The interest earned by the assessee could have been used for many other purposes. If the assessee purchased a house or distributed dividend or paid salary of its employees with the money received as interest, will the interest amount be treated as not his income? This is not a case of diversion of income by overriding title. The assessee was entirely at liberty to deal with the interest amount as he liked. The application of the income for payment of interest could not affect its taxability in any way.

**27.** The second reason given by the High Court was that the Institute of Chartered Accountants of India was a recognised authority on accounting principles. This fact has been recognised by this Court in the case of *Challapalli Sugars Ltd v. CIT* [\[1975\] 98 ITR 167](#). Therefore, its view has to be respected.

**28.** It is true that this Court has very often referred to accounting practice for ascertainment of profit made by a company or value of the assets of a company. But when the question is whether a receipt of money is taxable or not or whether certain deductions from that receipt are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with accountancy practice. Accounting practice cannot override section 56 or any other provision of the Act. As was pointed out

by Lord Russell in the case of *B.S.C. Footwear Ltd.* ( *supra*), the Income-tax Law does not march step by step in the footprints of the accountancy profession.

**29.** The question in *Challapalli Sugars Ltd's* case (*supra*) was about computation of depreciation and development rebate under the Indian Income-tax Act, 1922. In order to calculate depreciation and development rebate it was necessary to find out 'the actual cost' of the plant and machinery purchased by the company. This Court held that 'cost' is a word of wider connotation than 'price'. There was a difference between the price of a machinery and its cost. This Court thereafter pointed out that the expression 'actual cost' had not been defined in the Act. It was, therefore, necessary to find out the commercial sense of the phrase. *Khanna, J.* (as his Lordship then was) observed:

"As the expression 'actual cost' has not been defined, it should, in our opinion, be construed in the sense which no commercial man would misunderstand. For this purpose it would be necessary to ascertain the connotation of the above expression in accordance with the normal rules of accountancy prevailing in commerce and industry. The accepted accountancy rule for determining cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. 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 can be capitalised and added to the cost of the fixed assets created as a result of such expenditure." (p. 167)

**30.** This Court also took note of the provisions of the Companies Act, 1956 and in particular section 208(1)(b). It observed:

"... clause (b) of sub-section (1) of that section provides that in case, interest is paid on share capital issued for the purpose of raising money to defray the expenses of constructing any work or building or the provision of any plant in contingencies mentioned in that section, the sums so paid by way of interest may be charged to capital as part of the cost of construction of the work or building or the provision of the plant. The above provision thus gives statutory recognition to the principle of capitalising the interest in case the interest is paid on money raised to defray expenses of the construction of any work or building or the provision of any plant in contingencies mentioned in that section even though such money constitutes share capital. The same principle, in our opinion, should hold good if interest is paid on money not raised by way of share capital but taken on loan for the purpose of defraying the expenses of the construction of any work or building or the provision of any plant. The reason indeed would be stronger in case such interest is paid on money taken on loan for meeting the above expenses." (p. 175)

This Court also relied on an English case in support of this conclusion in *Hinds v. Buenos Ayres Grand National Tramways Co. Ltd* [1906] 2 Ch. 654. In *Hinds'* case (*supra*) dealing with the question of capitalisation of interest paid on loans taken to install electric traction for tram lines, it was held by *Warrington, J.*:

"Now, what is it that the company are really proposing to do? They are creating a capital asset by means of which they will hereafter earn, or they hope to earn, profits for the company. They are not simply employing contractors to find the money and do the work. They are finding the money themselves, and they find the money by borrowing it. What does each mile of line cost them under these circumstances - what is that they expend in constructing each mile of line, taking

*the amount of the borrowed money expended on that line to be £ 10,000, that being the company's estimate? The money is borrowed for that particular purpose - the £ 10,000. They have to pay interest on that £ 10,000 during the period that construction is taking place. In my opinion that asset which they are so constructing costs them not only the £ 10,000 but the £ 10,000 plus the amount of interest during the period of construction; and that is what they are out of pocket during the construction of that mile of line. Now, it seems to me that the company are entitled - I do not say that they are bound to do it - if they think fit to charge in their accounts as the cost of that mile of line not only £ 10,000, but the £ 10,000 and the interest on it during the period of construction.'" (p. 176)*

*In other words, it was held that the cost of construction will be the amount actually spent and also the interest payable on the amount borrowed during the period of construction.*

**31.** *The judgment in Challapalli Sugars Ltd's case (supra) goes to show that the Court was not in any way departing from legal principles because of any opinion expressed by the Institute of Chartered Accountants. The phrase 'actual cost' was not defined in the Act. Therefore, it had to be understood in the commercial parlance. To find that out the normal rule of accountancy prevalent in commercial and industrial circles was noted. According to the Institute of Chartered Accountants, actual cost will also include interest paid on borrowed money for the purchase of the assets. Khanna, J., however, did not stop there. He pointed out that the principle of capitalising interest was to be found in section 208 itself and was also consistent with the views of the English Courts.*

**32.** *But this is an entirely different case. Whether a particular receipt is of the nature of income and falls within the charge of section 4 is a question of law which has to be decided by the Court on the basis of the provisions of the Act and the interpretation of the term 'income' given in a large number of decisions of the High Courts, the Privy Council and also this Court. It is well-settled that income attracts tax as soon as it accrues. The application or destination of the income has nothing to do with its accrual or taxability. It is also well-settled that interest income is always of a revenue nature unless it is received by way of damages or compensation.*

**33.** *In the premises, we are of the view that the Madras High Court came to a correct decision in the case of Seshasayee Paper & Boards Ltd (supra). The contrary views expressed in the cases of Nagarjuna Steels Ltd (supra), Electrochem Orissa Ltd (supra) and Maharashtra Electrosynthesis Ltd's case (supra) are erroneous.*

**34.** *We are of the view that the Tribunal has come to a correct decision. The question referred by the Tribunal is in two parts. The first part of the question is answered in the affirmative and in favour of the revenue. The second part of the question is answered in the negative and in favour of the revenue."*

*This ratio of law as laid down by Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizer Limited (supra) was discussed by Hon'ble Supreme Court in subsequent judgment in the case of Bokaro Steel Ltd. (Supra) which was held to be a binding precedent, and it was observed by Hon'ble Supreme Court that the assessee did not challenge holding of interest income from short term deposit being chargeable to income-tax under the head 'Income from Other*

*Sources' under the provisions of Section 56 of the 1961 Act, by observing as under at para 4 :*

*"4. During these assessment years, the respondent-assessee had invested the amounts borrowed by it for the construction work which were not immediately required, in short-term deposits and earned interest. It has been held in these proceedings that the receipt of interest amounts to income of the assessee from other sources. The assessee has not filed any appeal from this finding which is given against it. In any case, this question is now concluded by a decision of this Court in Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT [\[1997\] 227 ITR 172](#). Hence, we are not called upon to examine that issue."*

*(Emphasis supplied by us)*

*We have also gone through the decision of Hon'ble Allahabad High Court in the case of M/s Sangam Power Generation Limited(supra) and have observed that Hon'ble jurisdictional High Court has passed a detailed order and decided this issue in favour of Revenue.*

*We have observed that the facts for the earlier years viz. ay's: 2009-10 and 2010-11 were clearly peculiar as it was at the behest of bank the deposits were created , which were automatically reversed by the bank , when the assessee required the funds towards implementation of the project. Thus, on its own peculiar facts, the finding was given by tribunal that there was no surplus funds held by assessee and interest income was inextricably linked with the construction and acquisition activities in the regular course of the assessee activities. In the impugned assessment year 2013-14 which is in consideration before us , it is observed that there was a further infusion of capital of Rs.600 crores in equal proportion by both the promoters namely NTPC Ltd. and UP RUVN Ltd. , and the assessee has earned interest income of Rs.1,67,02,568/- on deposits made with the bank which was sought to be set off by assessee against interest paid to bank on term loans availed for setting up of the project. But here during the impugned assessment year's, there are no such further findings as were there in ays:2009-10 and 2010-11 as to whether the surplus funds were deployed by assessee with deposit with banks on which interest income was received or short term deposits were created at the behest of the bank which were automatically credited by bank when the assessee required the funds for the project execution, and the ld. CIT(A) has merely followed the appellate order passed by the tribunal for earlier ay's: 2009-10 and 2010-11 . The power of ld. CIT(A) are co-terminus with the power of the Assessing Officer , and the ld. CIT(A) is duty bound to make enquiries to give finding that facts as are prevalent in the current year are similar/para materia to the facts of the earlier year and hence the appellate order passed by tribunal for earlier year is to be followed. Since there is no clear finding given by the ld. CIT(A) in the fitness of thing it will be appropriate that this issue is restore to the file of ld. CIT(A) for deciding the above issue afresh after considering the facts for impugned assessment year vis-à-vis facts prevalent in ay: 2009-10 and 2010-11 ,*

*and also after considering the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (Supra) and decision(s) of Hon'ble Allahabad High Court in the case of Sangam Power Generation Company Limited (supra) and Pryagraj Power Generation Company Ltd. (Supra) . Thus based on material on record, in the interest of justice and fairness to both the rival parties, we restore the matter back to the file of the ld. CIT(A) for fresh consideration and denovo determination of the issues on merits in accordance with law. The ld. CIT(A) is directed to provide proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law and evidences/explanations filed by assessee in support of its contentions shall be admitted by ld. CIT(A) and adjudicated on merits in accordance with law. We clarify that we have not commented on the merits of the issue in appeal. Thus, the appeals of the Revenue for ay: 2013-14 is allowed for statistical purposes. Since, the facts and issue in Revenue's appeal for ay: 2014-15 are similar, we also restore the said appeal to the file of ld. CIT(A) with similar directions. We order accordingly.*

8. Thus as could be seen above, the Tribunal has vide adjudicating Revenues appeal for ay: 2013-14 and 2014-15 set aside and restored the matter to the file of ld. CIT(A) for fresh determination of the issue with certain directions . Thus, Respectfully following aforesaid decision of tribunal , we are setting aside the appellate order passed by ld. CIT(A) on this issue and remitting the matter back to the file of ld. CIT(A) to decide this issue afresh on merits, with the same directions as were given by us while adjudicating appeal for ay: 2013-14 and 2014-15. The ld. CIT(A) will also look into specific additional contention of ld. CIT-DR that the bank is creating bank deposits because it is assessee who has itself given standing instructions to the bank, shall also be looked into by ld. CIT(A) while adjudicating appeal denovo. Needless to say that ld. CIT(A) shall give proper and adequate opportunity of being heard to the assessee in denovo appellate proceedings. The appeal filed by assessee on this issue is allowed for statistical purposes. We order accordingly.

9. With respect to second issue concerning interest earned by assessee from IVRCL and M.G. Contractors for advances paid for execution of certain work, we are also restoring the matter back to the file of Id. CIT(A) with a similar direction as above to look into the terms and conditions of the contract and the deposit made by the assessee with the contractors to see that whether the said deposits were made by assessee to contractors as part of the terms and condition of the contract for construction of the assessee project and if that be so then in that case it is to be held that the interest earned by assessee from said advances to contractors for carrying on said deposits is inextricably linked with the construction activity of the assessee for setting up of the project and hence it will go on to reduce the project. Reference is made to ratio of decision of Hon'ble Supreme Court in the case of CIT v. Bokaro Steel Ltd. [1999] 102 Taxman 94 (SC) , which shall than be applicable but, If however, Id. CIT(A) after investigation of the fact is of the view that the aforesaid interest income is earned by assessee on surplus funds deployed by the assessee to earn interest income, then in that situation ratio of decision of Hon'ble Supreme Court in the case of *Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT* [1997] 227 ITR 172 shall be applicable. Similar is the decision of Hon'ble Allahabad High Court in the case of M/s Sangam Power Generation Limited(supra) , which were also decided in favour of Revenue. With aforesaid directions, we are remitting this issue to the file of Id. CIT(A) for denovo adjudication of the issue on merits in accordance with law, after giving proper opportunity of being heard to the assessee. This issue is also allowed for statistical purposes. We order accordingly.

10. Now, we are left with the third issue which is with respect to forfeiture of EMD of Rs. 3,33,000/- received from the contractors on account of non performance of the contract . Undisputedly as per material on record, the assessee has not yet commenced commercial operations and its power plant is under construction , during the year under consideration . It is observed that the Tribunal has decided this issue

in favour of assessee while adjudicating appeal filed by assessee on this issue for ay: 2013-14 , vide orders dated 29.01.2021 in ITA No. 175/Alld/2018 , by holding as under:

*“10. We have heard both the parties and perused the material on record. Similar contention were made by both the rival parties , as were made while arguing the issue concerning interest income on deposits with bank which is adjudicated by us in preceding para’s of this order. In this case, we have observed that there is a clear finding by Id. Assessing Officer/Id. CIT(A) that earnest money(EMD) given by contractors was forfeited by assessee on account of non completion of work and other miscellaneous recoveries were made from contractors. It is undisputed that power plant project of the assessee was under implementation during the impugned ay: 2013-14 and commercial production has not yet started during the impugned assessment year. We have observed that the Hon'ble Supreme Court in the case of Bokaro Steel Ltd. (Supra) passed a detailed order in which it has been held that if the receipt are inextricably linked to the project under implementation then the same are be treated as capital receipt which will go on to reduce cost of project, by holding as under:*

*“5. We will take the first three heads under which the assessee has received certain amounts. These are the rent charged by the assessee to its contractors for housing workers and staff employed by the contractor for the construction work of the assessee including certain amenities granted to the staff by the assessee. Secondly, hire charges for plant and machinery which was given to the contractors by the assessee for use in the construction work of the assessee, and thirdly, interest from advances made to the contractors by the assessee for the purpose of facilitating the work of construction. The activities of the assessee in connection with all these three receipts are directly connected with or are incidental to the work of construction of its plant undertaken by the assessee. Broadly speaking, these pertain to the arrangements made by the assessee with its contractors pertaining to the work of construction. To facilitate the work of the contractor, the assessee permitted the contractor to use the premises of the assessee for housing its staff and workers engaged in the construction activity of the assessee's plant. This was clearly to facilitate the work of construction. Had this facility not been provided by the assessee, the contractors would have had to make their own arrangements and this would have been reflected in the charges of the contractors for the construction work. Instead, the assessee has provided these facilities. The same is true of the hire charges for plant and machinery which was given by the assessee to the contractors for the assessee's construction work. The receipts in this connection also go to compensate the assessee for the wear and tear of the machinery. The advances which the assessee made to the contractors to facilitate the construction activity of putting together a very large project was*

as much to ensure that the work of the contractors proceeded without any financial hitches as to help the contractors. The arrangements which were made between the assessee-company and the contractors pertaining to these three receipts are arrangements which are intrinsically connected with the construction of its steel plant. The receipts have been adjusted against the charges payable to the contractors and have gone to reduce the cost of construction. They have, therefore, been rightly held as capital receipts and not income of the assessee from any independent source.

6. In the case of Addl. CIT v. Indian Drugs & Pharmaceuticals Ltd. [\[1983\] 141 ITR 134](#), the Delhi High Court considered a case where the work of construction of the factory of the assessee was in progress and production had not commenced. Receipts from the sale of tender forms and supply of water and electricity to the contractors engaged in construction as also receipts on account of sale of stones, boulders, grass and trees were held to be receipts not from independent sources but were considered as inextricably linked with the process of setting up of business. These were directly related to the capital structure of business and were held to be capital in nature. We agree with this view taken by the Delhi High Court.

7. The appellant, however, relied upon the decision of this Court in Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case (supra). That case dealt with the question whether the investment of borrowed funds prior to commencement of business, resulting in earning of interest by the assessee, would amount to the assessee earning any income. This Court held that if a person borrows money for business purposes, but utilises that money to earn interest, however, temporarily, the interest so generated will be his income. This income can be utilised by the assessee whichever way he likes. Merely because he utilised it to repay the interest on the loan taken will not make the interest income as a capital receipt. The department relied upon the observations made in that judgment (at page 179) to the effect that if the company, even before it commences business, invests surplus funds in its hands for purchase of land or house property and later sells it at profit, the gain made by the company will be assessable under the head 'Capital gains'. Similarly, if a company purchases rented house and gets rent, such rent will be assessable to tax under section 22 as income from house property. Likewise, the company may have income from other sources. The company may also, as in that case, keep the surplus funds in short-term deposits in order to earn interest. Such interest will be chargeable under section 56 of the Act. This Court also emphasised the fact that the company was not bound to utilise the interest so earned to adjust it against the interest paid on borrowed capital. The company was free to use this income in any manner it liked. **However, while interest earned by investing borrowed capital in short-term deposits is an independent source of income not connected with the construction activities or business activities of the assessee, the same cannot be said in the present case where the utilisation of various assets of the company and the payments received for such utilisation are directly linked with the activity of setting up the steel plant of the assessee. These receipts are inextricably linked with the setting up of the capital structure of the assessee-company. They must, therefore, be viewed as capital receipts**

**going to reduce the cost of construction.** In the case of *Challapalli Sugars Ltd. v. CIT* [1975] 98 ITR 167, this Court examined the question whether interest paid before the commencement of production by a company on amounts borrowed for the acquisition and installation of plant and machinery would form a part of the actual cost of the asset to the assessee within the meaning of that expression in section 10(5) of the Indian Income-tax Act, 1922 and whether the assessee will be entitled to depreciation allowances and development rebate with reference to such interest also. The Court held that the accepted accountancy rule for determining cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. 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 can be capitalised and added to the cost of the fixed assets created as a result of such expenditure. **By the same reasoning if the assessee receives any amounts which are inextricably linked with the process of setting up its plant and machinery, such receipts will go to reduce the cost of its assets. These are receipts of a capital nature and cannot be taxed as income.**

8. The same reasoning would apply to royalty received by the assessee- company for stones, etc., excavated from the assessee-company's land. The land had been allowed to be utilised by the contractors for the purpose of excavating stones to be used in the construction work of assessee's steel plant. The cost of the plant to the extent of such royalty received is reduced for the assessee. It is, therefore, rightly taken as a capital receipt.

(Emphasis supplied by us)

*In this case, it is undisputed contractors has given earnest money (EMD) to the assessee and since they could not complete the work in time the assessee has forfeited the amount, and also there were miscellaneous recoveries from contractors. The commercial operations of the power plant has not yet commenced during the impugned ay and the project was under implementation. Thus, the receipts are inextricably linked to the project and the ratio of decision of Hon'ble Supreme Court in the case of Bokaro Steel Ltd. (Supra) shall be applicable and hence we are of the view that these are capital receipt and they cannot be brought to tax and shall go on to reduce the cost of the project . Hence , we reverse the appellate order passed by Id. CIT(A) and allow the appeal filed by the assessee on this issue. Thus, Assessee appeal for ay: 2013-14 is allowed. We order accordingly.*

Since the facts are para-materia in this year under consideration before us vis-à-vis for ay: 2013-14, we are deciding this issue in favour of the assessee and the said receipt on account of forfeiture of EMD which were given by contractors to

assessee , on account of non performance of contract during the construction period of the project, are held to be capital receipt which will go on to reduce the project cost. This issue is decided in favour of the assessee and appeal filed by assessee on this issue is allowed We order accordingly.

11. Thus, the appeal of the assessee in ITA no. 54/Alld/2020 for ay: 2015-16 is partly allowed for statistical purposes .

12. Since, the facts in ay: 2016-17 are para-materia to facts prevailing in ay: 2015-16, our decision for ay: 2015-16 shall apply mutatis mutandis to issues arising in appeal filed by assessee for ay: 2016-17. We order accordingly.

13. Thus, the appeal of the assessee in ITA no. 55/Alld/2020 for ay: 2016-17 is partly allowed for statistical purposes

14. In the result, both the appeals of the assessee for ay: 2015-16 and 2016-17 are partly allowed for statistical puporses.

Order pronounced in the open Court on 09/03 /2021 through video conferencing.

Sd/-  
[VIJAY PAL RAO]  
JUDICIALMEMBER  
Aks/  
DATED: 09 /03 /2021

sd/-  
[RAMIT KOCHAR]  
ACCOUNTANTMEMBER

Copy forwarded to:

1. Appellant –Meja Urja Nigam Private Limited
2. Respondent –The Income Tax Officer, Ward 2(2), Allahabad, U.P.
3. CIT(A) –Allahabad, U.P.
4. CIT
5. DR -

*ITA No.54 and 55/ALLD/2020*  
*Meja Urja Nigam Pvt. Ltd.*  
*Assessment Years: 2015-16 & 2016-17*

By order

Assistant Registrar