

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A No.:1690/CHNY/2019
निर्धारण वर्ष/ **Assessment Year 2013 - 2014**

M/s. Hablis Hotels,
No.19, G.S.T. Road,
Guindy, Chennai – 600 032.
Tamil Nadu

The Income Tax Officer,
Vs. Non-Corporate Ward – 1(3),
Chennai – 600 034

PAN : AALFR 0921L

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थीकी ओरसे/**Appellant by**

: Mr. R. Sivaraman, Advocate

प्रत्यर्थीकी ओरसे/**Respondent by**

: Mr. Ravindra T. Mishra, JCIT

सुनवाई की तारीख/**Date of Hearing**

: 19.07.2022

घोषणा की तारीख/**Date of Pronouncement**

: 19.07.2022

आदेश / O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the Assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-2 in ITA No.312/2016-17; dated 25.03.2019. The Assessment was framed by the Income Tax Officer, Non-Corporate Ward – 1(3), Chennai for the Assessment Year 2013 – 2014 u/s.143(3) of the Income Tax Act, 1961 (hereinafter “the Act”) vide order dated 31.03.2016.

2. The only issue in this appeal of the Assessee is against the order of the Commissioner of Income Tax (Appeals) confirming the action of the Assessing Officer in disallowing the interest paid on borrowed funds amounting to Rs.58,33,333/-. For this, the Assessee has raised various grounds which we need not reproduce.

3. The brief facts of the case are that the Assessee is a partnership firm, running a Hotel in the name of M/s. Hablis Hotels located at Chennai. The Assessee has borrowed a sum of Rs.20.00 crores from one of the partners, Mr. D. Rajesh for the purpose of construction of the Hotel. The Assessee firm temporarily invested these funds in the short term deposit in the Bank and earned interest of Rs.82,13,028/-. The Assessee also paid interest on the borrowed funds amounting to Rs.58,33,333/-. The Assessee disclosed the interest earned of Rs.82,13,028/- as income from other sources and claimed deduction of interest paid on the borrowed funds of Rs.58,33,333/- u/s.57 of the Act. The Assessing Officer had disallowed the interest expenses of Rs.58,33,333/- claimed by the Assessee while framing the assessment u/s.143 of the Act by holding that the interest paid on the loan amount cannot be adjusted against the interest earned because the interest paid is capital in

nature. The Commissioner of Income Tax (Appeals) also, relying on decision of the Hon'ble Supreme court in the case of Tuticorin Alkali Chemicals and Fertilizers Limited Vs. Commissioner of Income Tax reported in 227 ITR 172 confirmed the action of the Assessing Officer by disallowing the interest paid.

Aggrieved, the Assessee is in appeal before the Tribunal.

4. We have heard the rival contentions and had gone through the facts and circumstances of the case. We noted that the Assessee has earned a bank interest on the idle funds available with it including the loan of Rs.20.00 crores taken from the partner, Mr. D. Rajesh and earned bank interest of a sum of Rs.82,13,028/- on this deposit. Consequently, the Assessee has also paid an interest to the partner, Mr. D. Rajesh to the extent of Rs.58,33,333/- and claimed the same for deduction u/s.57 of the Act. We noted that this issue is covered by the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Bokaro Steel Limited reported in [1999] 236 ITR 315 (SC); wherein the Hon'ble Supreme Court has considered the character of interest paid and received by the Assessee and held to be capitalized, both., i.e. interest paid as well as interest received by observing in paragraph No.7, as under:

“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 Limited v. Commissioner of Income Tax (1975] 98 ITR 167 = 2002-TIOL-593-SC-IT, 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 in the within the meaning of that expression in Section 10(5) of the Indian Income-tax Act, 1922 and case whether the assessee will be entitled to depreciation allowances and development rebate with share 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 amount 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.”

5. We noted that in the present case also, the Assessee has disclosed the receipt of interest as income amounting to Rs.82,13,028/- and claimed the interest payment on the borrowed funds amounting to Rs.58,33,333/- as deduction u/s.57 of the Act. The Assessee has disclosed the income u/s.56 of the Act as income from other sources. Even, if we follow the principle laid down by the Hon'ble Supreme Court, no income would be accrued to the Assessee on receipt of the interest. Since, the Assessee has disclosed this interest receipt as income from other sources amounting to Rs.82,12,028/-, the Assessee is also entitled to claim the interest expenditure of Rs.58,33,333/- as expenses. Thus, we

reverse the orders of the lower authorities and allow the ground raised by the Assessee.

6. In the result, the appeal of the Assessee in I.T.A No.:1690/CHNY/2019 is allowed.

Order pronounced in the court on 19th July, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 19th July, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF