

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 308/DEL/2016
[Assessment Year: 2012-13]**

M/s Kanpur Fertilizers & Cement Ltd., Sector-128, Noida. PAN- AADCK9974B	<u>Vs</u>	Income-tax Officer, Ward-2(1), Noida.
APPELLANT		RESPONDENT
Assessee represented by		Shri Gaurav Jain, Adv. & Shri V.K. Garg, Adv., & Shri Sudarshan Ray, Adv.
Department represented by		Shri Anuj Garg, Sr. DR
Date of hearing		24.04.2023
Date of pronouncement		30.05.2023

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-I, Noida, dated 30.11.2015, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

“1. That the Ld. Assessing Officer (Ld. AO) has erred on facts and in law in assessing a sum of Rs. 1,93,75,802/- being interest income from FDRs during preoperative period as income from other sources. The Ld. AO has erred in not treating the same as capital receipt to be set off against pre-operative expenses. The Ld. CIT(A) has erred in sustaining the view of the

Ld. AO.

2. *That the Ld. AO has erred on facts and in law in assessing income on FDRs of Rs. 1,93,75,802/- at its gross amount as income from other sources rather than in netting of the same against substantially higher interest paid which is linked with the said interest earned during pre-operative period related to the sole project being implemented. The Ld. CIT(A) has erred in sustaining the view of the Ld. AO*

3. *That the treatment of the said interest from FDRs as income from other sources rather than in assessing the same as capital receipt to be set off against pre-operative expenses is contrary to binding Accounting Standards. As such too, the addition as made and as sustained by Ld. CIT(A) is liable to be deleted.*

4. *That the FDRs are intrinsically linked to the essential funds for the sole object of setting up the project involved in accordance also with the binding provisions of related agreements. As such too, the interest paid and earned have nexus and it is only the net interest which would have been capable of being considered for adjustment, if any. There is no positive net interest and as such too there is no income capable to being assessed as interest income.*

5. *That the assessment of the said income from interest on FDRs during preoperative period as income from other sources is contrary to the facts and law and is based on ignoring or not appreciating the submissions and case laws in appellant's favour. The addition as made and as sustained by Ld. CIT(A) is liable to be deleted in toto.*

6. *That the interest charged u/s 234B is incorrect.*

7. *That the assessment as made and the order of the Ld. CIT(A) are against law and facts of the case involved.*

8. *That the grounds of appeal as herein are without prejudice to each other.*

9. *That the appellant craves leave to add, alter or forego any ground(s) before or at the time of hearing."*

2. Ground nos. 1 to 5 are interconnected and are against treating the interest earned from FDRs during preoperative period as income from other sources. Ground no. 6 is against charging of interest u/s 234B and the other grounds are general in nature.

3. Facts giving rise to present appeal are that in this case the assessee company filed its return of income on 28.09.2012 declaring income at 'Nil'. The case was selected for scrutiny and the assessment u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") was framed vide order dated 27.01.2015. The Assessing Officer while framing the assessment noticed that the assessee in its account has shown pre-operative expenditure of Rs. 54,37,00,000/- and out of which deducted the interest received on short-term deposits with scheduled banks amounting to INR 1,93,75,802/-. The Assessing Officer issued a show cause as to why this amount of INR 1,93,75,802/- may not be treated as income from other sources. The assessee in response thereof filed written submissions and relied upon various case laws. The explanation of the assessee was not found acceptable. Therefore, this amount was added into the income of the assessee under the head income from other sources. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals), who also sustained the addition. Now the assessee is in appeal before this Tribunal.

4. Learned counsel for the assessee vehemently argued that the authorities below were not justified in making and sustaining the addition. Learned counsel placed reliance on the judgment of the Hon'ble Delhi High Court rendered in the case of Indian Oil Panipat Power Consortium Ltd. v. ITO 315 ITR 255 and also placed reliance on the judgment of the Hon'ble Supreme Court rendered in the case of Bokaro Steel Ltd. 236 ITR 315 (SC). Further reliance was placed on the judgment of the Hon'ble Madras High Court rendered in the case of CIT Vs. VGR Foundations 298 ITR 132 (Mad.). Learned counsel further reiterated the submissions as made in the written submissions. For the sake of clarity, the submissions are reproduced herein below:

“1. Facts are that the assessee company during the relevant financial year was in the process of setting up a fertilizer manufacturing unit at Kanpur by revamping and renovating a sick industrial unit taken over under a Rehabilitation Scheme sanctioned by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985.

2. Apart from the share-holders' funds of Rs. 399.93 Cr as on 31.3.2012, the assessee company had short term debt funds of Rs. 330.38 Cr under the head 'Other Current Liabilities'. All the aforesaid sources of funds were for infusion in the fertilizer project as well as for settlement of the old liabilities of the sick unit taken over under the Rehabilitation Scheme.

3. During the relevant financial year the assessee company earned interest of Rs. 1,93,75,802/- by temporarily placing a part of the shareholder funds as well as the interest-bearing debt funds in short-term deposits with scheduled banks. These short-term investments were made with a view to make efficient use of the available funds and to partly recoup the cost of the project. The interest earned from investment of shareholder funds and interest-bearing funds amounted to Rs. 1,37,49,625/- and Rs. 56,26,177/- respectively. Interest paid on debt funds amounted to Rs. 4,12,82,552/-.

Details of interest earned and interest paid are at pp. 29-30 of the Paper Book.

4. *It is the assessee's contention that the aforesaid short-term deposits continued to form part of the funds required for the implementation of the project. They were not spare or surplus funds. The purpose of making the short-term deposits was to make efficient use of the project capital and thereby reduce the cost of the project to the extent possible. By no means did they represent funds taken away from the project as surplus funds to create an independent source of income. The funds deployed in short-term deposits continued to be inextricably linked with the road construction project. The interest received on these deposits was therefore a capital receipt which went to reduce the cost of the project and was rightly credited to the pre-operative expenditure. However, the learned assessing officer while making the impugned assessment has assessed the aforesaid interest as income from other sources.*

5. *It is submitted that the facts of the assessee's case are similar to the facts in **Indian Oil Panipat Power Consortium Ltd v. ITO 315 ITR 255** decided by the Hon'ble Delhi High Court. In that case, the issue was as to the treatment to be accorded to the interest earned on monies received as share capital by the assessee which were temporarily put in a fixed deposit awaiting acquisition of land which had run into legal entanglements on account of title. In deciding the issue, the Hon'ble Court observed:*

"We are called upon to really decide as to whether given the facts obtaining in the assessee's case it would be covered by the line of cases which follow the ratio of the decision of the Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Ltd. [1997] 227 ITR 172 or those which follow the ratio of the Supreme Court in the case of CIT v. Bokaro Steel Ltd. [1999] 236 ITR 315. At the outset, we must note that the Supreme Court in the case of Bokaro Steel Ltd. [1999] 236 ITR 315 has noticed the judgment of the Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Ltd. [1997] 227 ITR 172.

"In our opinion, the Tribunal has misconstrued the ratio of the judgment of the Supreme Court in the case of Tuticorin Alkali Chemicals [1997] 227 ITR 172 and that of Bokaro Steel Ltd. [1999] 236 ITR 315. The test which permeates through the judgment of the Supreme Court in Tuticorin Alkali Chemicals [1997] 227 ITR 172 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 the Supreme Court judgment in Bokaro Steel Ltd. [1999] 236 ITR 315 to our mind is that if income is earned, whether by way of interest or in any other manner on funds which are otherwise "inextricably linked" to the setting up of the plant, such income is required to be capitalized to be set off against preoperative expenses.

"It is clear upon a perusal of the facts as found by the authorities below that the funds in the form of share capital were infused for a specific purpose of acquiring land and the development of infrastructure. Therefore, the interest earned on funds primarily brought for infusion in the business could not have been classified as income from other sources. Since the income was earned in a period prior to commencement of business it was in the nature of capital receipt and hence was required to be set off against pre-operative expenses. In the case of Tuticorin Alkali Chemicals [1997] 227 ITR 172 it was found by the authorities that the funds available with the assessee in that case were "surplus" and, therefore, the Supreme Court held that the interest earned on surplus funds would have to be treated as "income from other sources". On the other hand in Bokaro Steel Ltd [1999] 236 ITR 315 (SC) where the assessee had earned interest on advance paid to contractors during precommencement period was found to be "inextricably linked" to the setting up of the plant of the assessee and hence was held to be a capital receipt which was permitted to be set off against pre-operative expenses."

6. ***In CIT v. VGR Foundations*** [2008] 298 ITR 132 (Mad) the Hon'ble Chennai High Court has also held that interest earned from the temporary investment of shareholders' funds was a capital receipt.

7. *In the assessee's case the funds temporarily placed in short-term deposits were not surplus funds as was the case in Tuticorin Alkali Chemicals (supra). They were funds required for implementing the project for the production of fertilizer and were therefore inextricably connected with it, as was the case in Indian Oil Panipat Power Consortium (supra).*

Hence, any interest earned from their temporary investment was a capital receipt which went to reduce the cost of the project and was rightly credited to the preoperative expenditure. Hence, the same can not be assessed as income from other sources. The case of the assessee is governed by the rule in Bokaro Steel Ltd [1999] 236 ITR 315 (SC) and followed in Indian Oil Panipat Power Consortium Ltd v. ITO 315 ITR 255 (Del) and not by the rule in Tuticorin Alkali Chemicals [1997] 227 ITR 172 (S.C.) followed in CIT v. Indo Gulf Fertilizer and Chemicals Corporation Ltd. [2006] 280 ITR 621 (All). Hence, the income of Rs. 1,93,75,802/- assessed by the learned assessing officer by way of income from other sources and charged to tax is liable to be deleted.

8. *In any case, and without prejudice the above, the interest of Rs. 56,26,177/- earned from the temporary investment of interest-bearing debt funds can not be assessed as income for the following reasons –*

- 1) *There is no real income from interest because the cost of invested funds is more than the return there-from. Income must exist before it can be charged under s. 4 of the Act. There can be no charge on a fictional or notional income unless specifically authorized.*
- 2) *Even if it is held that charge under s. 4 is attracted at the point of accrual of interest on gross basis, the cost of invested funds is deductible under s. 57 of the Act. Significantly, on the issue of deduction of cost of invested funds under s. 57, the Hon'ble Supreme Court in Tuticorin **Alkali** observed - "However desirable it may be from the point of view of equity, this adjustment cannot be made unless the law specifically permits such adjustment."*
- 3) *Apparently, in Tuticorin Alkali, the Hon'ble Court felt constrained by the absence of a specific provision under which the interest cost of invested funds could be allowed, even though the Court felt such deduction to be equitable. It is however submitted that such deduction should be seen to be covered within the scope of clause (iii) of s. 57. The words 'wholly and exclusively for the purpose of making or earning such income' used in the said clause should be given an accommodative rather than a restrictive interpretation. So long as borrowed funds stood invested in FDRs, howsoever temporarily, they were after all being used wholly and exclusively for such investment.*
- 4) *It is fallacious to hold that the interest-cost of borrowed-and-*

invested funds was an application of income even though such cost attached to the borrowed funds from their origination. The borrowed funds had no existence sans the interest-liability. To say that a cost which attached to the borrowed funds even before any income therefrom was earned was an application of the subsequently earned income - is not a logical proposition. With great respect, the logic of this proposition is a bit stretched and obscure.

5) *When interest-bearing funds meant for the acquisition of capital assets of business are temporarily invested, the accruing return is not an income but a cost-reduction factor. The Indian Accounting Standard (AS) 16, the International Accounting Standard (IAS) 23, and the US GAAP - all recognize such return as a cost-reduction factor and, therefore, require that the eligible cost of borrowed funds shall be reduced by any income earned from their temporary investment.*

6) *It is true that tax law need not always follow the accounting practice. However, a standard- and mandatory- accounting practice should not be discarded unless it is shown to be contrary to or inconsistent with specific provisions or scheme of the Act. Where the income from temporary investment of borrowed funds is less than the cost of borrowed funds, there conceptually is no chargeable income under the Act and hence no conflict with the accounting standard. Where, however, such income is more than the cost of invested funds, the excess may be chargeable under the Act, supervening the accounting standard.*

7) *It may also be submitted that a codified and mandatory accounting standard has far greater sanctity and persuasive value as compared to a general accounting practice. It should not be dismissed lightly except for valid reasons of conflict with specific provisions of the Act. It bears note that at the time the judgment in **Tuticorin Alkali** was rendered (1997), Accounting Standard (AS) 16 did not exist. The standard was issued only in the year 2000.*

8) *None of the aforesaid arguments and materials was put before the Hon'ble Court in Tuticorin Alkali. Hence the rule in Tuticorin Alkali in- so-far as it pertained to the deductibility of interest-cost of borrowed funds should not be treated as stare decisis. This issue needs to be adjudicated afresh after considering the afore-stated arguments. These arguments are very relevant and material*

9. *To conclude, interest earned to the extent of Rs. 1,37,49,625/- from temporary investment of shareholder funds during the construction period of the project is a capital receipt in terms of **Indian Oil Panipat Power Consortium Ltd v. ITO** 315 ITR 255 (Del) and **CIT v. VGR Foundations** [2008] 298 ITR 132 (Mad). The interest earned of Rs. 56,26,177/- from temporary investment of interest-bearing debt funds is not taxable because: (a) there is no net income - the cost of invested funds being higher than the return there-from; and (b) such interest is liable to be set-off against pre-operative expenditure as per the accounting standard AS-19.”*
5. On the other hand, learned DR opposed the submissions and supported the orders of the authorities below. Learned DR submitted that in view of the judgment of the Hon’ble Supreme Court in the case of *Tuticorin Alkali* 227 ITR 172.
6. We have heard the rival contentions and perused the material available on record. The issue needs to be adjudicated is whether the interest earned by the assessee from the short term fixed deposits with scheduled banks is liable to be credited in pre-operative expenses, treating the same being a capital receipt, thereby, reducing it from project cost.
7. Admittedly, in this case the Assessing Officer has disallowed the claim by following the ratio laid down by the Hon’ble Supreme Court in the case of *Tuticorin Alkali Chemicals and Fertilizers Ltd.* [1997] 227 ITR 172, wherein the Hon’ble Apex Court was pleased to hold that it is well settled that interest income is always of a revenue nature unless it is received by way of damages or

compensation. The Ld. CIT(Appeals) sustained the impugned addition by observing as under:-

“5. It is undisputed that the business of the assessee has not yet not commenced and the appellant is in the process of setting up of its business which admittedly was formed by way of demerger of a sick industrial unit under the BIFR Scheme under the SICA 1985 from M/s. Duncan Industries Ltd and the business of the demerged enterprise is yet to commence. As the business of the appellant has not yet commenced, the case of the appellant can not be compared with that of any other person in whose case the business is already in existence. The various authorities being referred to by the Id. counsel of the appellant where the business of those persons was already in existence is of no help to the appellant. The only case which can compare with the facts of the case of the appellant is that of the Tuticorin case. In any case, this is nobody’s case that a person cannot have income unless its business has commenced. A person under the taxation law can have income before the commencement of the business or even without having any business. The IT. Act, 1961 categorizes income under five Heads and business is one of such heads. All these five Heads are capable of existing independently of each other and none of these Heads is a pre-condition for others. It is therefore, perfectly possible to have income either before the commencement of the business or even without the existence of the business.

6. Once the business is not in existence, there will not arise any question of applying any of the contingencies which primarily relates to existence of the business. The arguments advanced by the Id. counsel for the appellant concerns primarily with the contingencies of the business income and once there cannot be a business income because of there being no business those contingencies will not apply to the facts of the case.

7. As there is no case of provisions of Chapter IV of the I.T. Act, 1961 applying to the case of the appellant as the business of the appellant has not yet commenced, the plea taken by the id. counsel for the appellant is of no help. The law does not recognizes a situation where the nature of receipt in the hands of an assessee can be determined with reference to the future situations. The income of assessee is to be computed for the assessment year concerned and with reference to fact of that year alone and not with reference to proposed or possible action likely to take place in the realm of

the future.

8. *As a person can have income without there being a business or before the commencement of the business, the Id. A.O. has correctly proceeded to examine the nature of the receipt of Rs.1,93,75,802/- in the hands of the appellant and has correctly held the same to be income of the appellant under the Head "Income From Other Sources". The receipt in question has all the ingredients of being income and therefore cannot be excluded from the total income of the appellant which is chargeable to Income Tax and as the same is not income from Business, is not income from Salary or Capital Gains or Income From House Property, the Id. A.O. in view of the nature of the receipt being that of the income has correctly invoked the provisions of section 56 of the I.T.Act, 1961 and included the same in the total income of the appellant liable to tax in concerned assessment year. I therefore, find no infirmity in the impugned order of the Ld. A.O. and the same calls for no interference from this authority. The same is therefore confirmed. The appeal of the appellant fails.*

9. *The same is decided in terms of the above."*

8. The learned AR heavily relied on the judgment of the Hon'ble Delhi High Court rendered in the case of Indian Oil Panipat Powers Consortium Ltd. Vs. ITO [2009] 315 ITR 255, wherein the Hon'ble High Court has examined the entire law and also the judgment of the Hon'ble Supreme Court rendered in the cases of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra) and CIT v. Bokaro Steel Ltd. [1999] 236 ITR 315, inter alia, observing as under:

"11 In our opinion, the Tribunal has misconstrued the ratio of the judgment of the Supreme Court in the case of Tuticorin Alkali Chemicals [1997] 227 ITR 172 and that of Bokaro Steel Ltd. [1999] 236 ITR 315. The test which permeates through the judgment of the Supreme Court in Tuticorin Alkali Chemicals [1997] 227 ITR 172 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 the Supreme Court judgment in Bokaro Steel Ltd. [1999] 236 ITR 315 to our mind is that if income is earned, whether by way of interest or in any other manner on funds which are otherwise "inextricably linked" to the setting up of the plant, such income is required to be capitalized to be set off against pre-operative expenses.

12 The test, therefore, to our mind is whether the activity which is taken up for setting up of the business and the funds which are garnered are inextricably connected to the setting up of the plant. The clue is perhaps available in section 3 of the Act which states that for newly set up business the previous year shall be the period beginning with the date of setting up of the business. Therefore, as per the provision of section 4 of the Act which is the charging section income which arises to an assessee from the date of setting of the business but prior to commencement is chargeable to tax depending on whether it is of a revenue nature or capital receipt. The income of a newly set up business, post the date of its setting up can be taxed if it is of a revenue nature under any of the heads provided under section 14 in Chapter IV of the Act. For an income to be classified as income under the head "Profits and gains of business or profession" it would have to be an activity which is in some manner or form connected with business. The word "business" is of wide import which would also include all such activities which coalesce into setting up of the business. See Mazagaon Dock Ltd. v. CIT [Excess Profits Tax [1958] 34 ITR 368 (SC) and Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax [1954] 26 ITR 765 (SC). Once it is held that the assessee's income is an income connected with business, which would be so in the present case, in view of the finding of fact by the Commissioner of Income-tax (Appeals) that the monies which were inducted into the joint venture company by the joint venture partners were primarily infused to purchase land and to develop infrastructure then it cannot be held that the income derived by parking the funds temporarily with Tokyo Mitsubishi Bank, will result in the character of the funds being changed, inasmuch as, the interest earned from the bank would have a hue different than that of business and

be brought to tax under the head "Income from other sources". It is well settled that an income received by the assessee can be taxed under the head "Income from other sources" only if it does not fall under any other head of income as provided in section 14 of the Act. The head "Income from other sources" is a residuary head of income. See S. G. Mercantile Corporation P. Ltd. v. CIT [1972] 83 ITR 700 (SC) and CIT v. Govinda Choudhury and Sons [1993] 203 ITR 881 (SC).

13 It is clear upon a perusal of the facts as found by the authorities below that the funds in the form of share capital were infused for a specific purpose of acquiring land and the development of infrastructure. Therefore the interest earned on funds primarily brought for infusion in the business could not have been classified as income from other sources. Since the income was earned in a period prior to commencement of business it was in the nature of capital receipt and hence was required to be set off against pre-operative expenses. In the case of Tuticorin Alkali Chemicals [1999] 227 ITR 172 it was found by the authorities that the funds available with the assessee in that case were "surplus" and, therefore, the Supreme Court held that the interest earned on surplus funds would have to be treated as "income from other sources". On the other hand in Bokaro Steel Ltd [1999] 236 ITR 315 (SC) where the assessee had earned interest on advance paid to contractors during pre-commencement period was found to be "inextricably linked" to the setting up of the plant of the assessee and hence was held to be a capital receipt which was permitted to be set off against pre-operative expenses.

14 There is another perspective from which the present issue can be examined. Under section 208 of the Companies Act, 1956, a company can pay interest on share capital which is issued for a specific purpose to defray expenses for construction of any work and which cannot be made profitable for a long period subject to certain restrictions contained in sub-sections (2) to (7) of section 208. This section was specifically noted by the Supreme

Court in Challapalli Sugars Ltd. v. CIT [1975] 98 ITR 167. The Supreme Court went on to observe at page 175 as follows :

"We have already referred to section 208 of the Companies Act which makes provision for payment of interest on share capital in certain contingencies. 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 sum 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 capitalizing the interest IT 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 or contingencies mentioned in that section even though such money constitutes share capital. The same principle, in our opinion, shorn a 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."

9. From the above it is evident that the Hon'ble Delhi High Court has considered both the judgments of Hon'ble Supreme Court rendered in the cases of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra); and Bokaro Steel Ltd(supra). In the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra), funds were found to be surplus that were deployed in short term deposits, that earned interest thereon which was held to be chargeable under the head "income from other sources". But in the case of Bokaro Steel Ltd(supra), the

assessee had earned interest on advance paid to contractors during pre-commencement period was found to be “inextricably linked” to the setting up of the plant of the assessee and hence was held to be capital receipt which was permitted to be set off against the pre-operative expenses. In the light of the judgment of Hon’ble Delhi High Court in the case of Indian Oil Panipat Powers Consortium Ltd. (supra), let us examine the facts of the present case, whether the interest earned on term deposits are “inextricably linked” for revamping/ renovating of sick unit.

10. The assessee company claims that during financial year it was in the process of setting up of a fertilizer manufacturing unit at Kanpur by revamping and renovating a sick industrial unit taken over under a Rehabilitation Scheme. For revamping and renovating of sick industrial unit, it arranged funds in the form of share holder’s and debt funds. It is the contention of the assessee that it earned interest of Rs. 1,37,49,625/- on share holder’s funds and Rs. 56,26,177/- on debt funds. It is contended that the authorities below grossly erred in not allowing set off against the interest paid on debt fund amounting to Rs. 4,12,82,552/-.

11. We have given our thoughtful consideration to the material placed before us. During the course of hearing it was pointed out by the learned counsel for the

assessee that the amount was incurred on the project. In this regard he drew our attention to the balance-sheet to demonstrate that the amount was being utilized for renovating and revamping of the sick industrial unit, hence it is inextricably linked to the project. He further brought to our notice that the assessee company issued bank guarantee to Indian Oil Corporation against the FDR to the tune of Rs. 1417 lakh and of Rs. 7.50 lakh to State Governments. This fact goes to prove that interest income earned by the assessee is inextricably linked with the revival of the project. It is stated that FDR of INR 19,14,70,000/- was kept as margin money against bank guarantee which was given to Indian Oil Corporation and other State Governments of Haryana, Uttar Pradesh and Uttrakhand, including Kanpur Electricity State Co. Ltd. These FDRs were kept as margin money for the project implementation, hence for business expediency. Thus, the interest being inextricably linked to project is a capital receipt that goes to reduce the cost of project and accordingly, the assessee correctly reduced the same from the cost of expenditure on the project. The fact that FDRs were utilized as margin money against bank guarantee, that was given to Indian Oil Corporation and other State entities, is not rebutted by the learned DR. Thus, the issue is squarely covered by the decision of the Hon'ble Delhi High Court rendered in the case of Indian Oil Panipat Powers Consortium Ltd. Vs. ITO (supra).

12. The learned counsel for the assessee has also brought to our notice the decision of the Coordinate Bench of this Tribunal rendered in the case of ITO vs. M/s Adani Power Rajasthan Limited (ITA No. 1430/Ahd/2015 – order dated 18.01.2019). The Coordinate Bench after considering the various ratio of decisions, in para 15 of its order has held as under:

“15. Apart from the decision of co-ordinate bench adjudicating the issue in favour of the assessee, we also take notice of the process of reasoning applied by CIT(A) and approve his action affirmatively in so far as interest generated on deposits placed with SBI. The CIT(A) has rightly held that interest income to be of capital nature linked with the process of setting up of its power plant and such receipts would go to reduce the cost of the project which also includes huge interest costs as capitalized. For coming to such conclusion, the CIT(A) has taken cognizance of the decision of the Hon’ble Supreme Court in the case of Bokaro Steel Ltd. (supra), Karnataka corporation Sugar Mills Ltd. & Bongaigaon Refinery & Petro Chemicals Ltd. vs. CIT [2001] 251 ITR 329 which in turn distinguish the decision of the Hon’ble Supreme court in Tuticorin Alkali Chemicals Fertilizers Ltd. (supra). The CIT(A) has observed on facts that assessee kept fixed deposit as margin money with SBI for obtaining bank guarantee to avail term loan facility for the project related works. The margin money kept is 10% of the bank guarantee of Rs.150 Crores obtained from SBI. The CIT(A) thus found that deposits were integrally connected with the setting up of power plant. Thus, we find ourselves in complete agreement with the action of the CIT(A) in upholding the action of AO to reduce interest income arising from deposits placed with SBI out of project development expenditure and in reversing the action of the AO in treating the same as revenue income dehors the projects development in progress. The grievance of Revenue thus is bereft of any merits.”

13. In the light of above binding precedence, we do not see any reason to take a different view. Therefore, respectfully following the same, we hereby direct the

Assessing Authority to delete the disallowance. Grounds raised in this appeal are allowed.

14. Appeal of the assessee is allowed.

Order pronounced in open court on 30th May, 2023.

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**