

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Sh. Saktijit Dey, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 4343/Del/2019 : Asstt. Year: 2014-15**

Brahma Center Development Pvt. Ltd., Cyber Terraces, 5A, 10 <sup>th</sup> Floor, DLF Cyber City, Phase-II, Gurgaon, Haryana-122002	Vs.	ACIT, Circle-5(1), New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAECB1294N</b>		

**Assessee by : Sh. Salil Kapoor, Adv.**

**Ms. Ananya Kapoor, Adv.**

**Revenue by : Sh. P. Praveen Sidharth, CIT DR**

**Date of Hearing: 20.04.2023**

**Date of Pronouncement: 17.07.2023**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-2, New Delhi dated 14.03.2019.

2. Following grounds have been raised by the assessee:

*"1. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in facts and in law in confirming the assessed income of the Appellant at INR 3,10,89,177 as against the return loss of INR 7,05,19,905 and passing the order in a malafide manner without taking into consideration the material furnished on record.*

*2. The Ld. CIT(A) erred on the facts of the case in inferring that the reasons for additions made by the Assistant Commissioner of Income Tax, Circle -5(1), New Delhi ('Ld. AO') on account of interest received*

*on fixed deposits amounting to INR 8,59,82,073 are well founded, without considering the fact that such interest had intrinsic and insegregable nexus with the real estate project being undertaken by the Appellant and therefore, should be reduced from cost of project.*

*Without prejudice to the above, the Ld. CIT(A) failed to consider the submission of the Appellant that in case interest is excluded from the cost of project, then corresponding interest payment on compulsory convertible debentures ('CCDs') issued to fulfill its payment obligation towards purchase of project land, which has currently been capitalized in the cost of project should be allowed as deduction and only net income from interest can be subjected to income tax.*

*3. That the CIT(A) has erred in law and on facts in inferring that expenditures incurred by the Appellant on account of Assured returns on project Athena of INR 1,00,68,934 and interest on delayed payment of installments to Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC) amounting to INR 54,87,990 were closely related with the project and needed to be capitalized.*

*4. That the Ld. CIT(A) erred in law and on facts in stating that interest on delayed payment of installments to HSIIDC was not proved as actual payment by the Appellant before the Ld. AO, without appreciating the fact that such proof were never sought by the Ld. AO. The Ld. CIT(A) failed to appreciate that the proofs of payment were duly submitted by the Appellant before the Ld. CIT(A).*

*5. The Ld. CIT(A) erred in law and on facts in not considering the Appellant's reply furnished before him and in not providing any opportunity in this regard. The findings of the Ld. CIT(A) are based on mis-appreciation of the documents and on assumptions and presumptions without bringing any adverse material on record."*

3. The assessee company is engaged in the business of promotion, construction and development of projects on the project land allotted by Haryana State Industrial and Infrastructure Development Limited (HSIDC). As per the agreement with HSIIDC, the assessee was required to pay the purchase consideration in installments to HSIIDC towards acquisition of land. In this regard, the company raised funds from non-resident shareholders/investors outside India through CCDs bearing interest cost of 12% per annum to fulfill its payment obligation towards HSIIDC. The amount of interest payable on CCDs have been duly capitalized to the cost of the project.

4. The surplus amount of funds raised by the assessee which were not due immediately by way of installment payment, they were deposited in the bank as FDR. It was argued that the FDR has close nexus the project and hence the interest from FDR should not be treated as income from other sources.

5. The issue of taxability of interest from FDRs in the case of the assessee stands covered by the judgement in the Appellant's own case by the order of the ITAT (ITA No. 4341 & 4342/Del/2019) in Appellant's own case for AYs 2012-13 and 2013-14, wherein it was held as under:

*"Hon'ble jurisdictional High court considered the decision of the Hon'ble Apex Court in the case of Ms. Tuticorin Alkal Chemicals and Fertilizers Ltd (supra) and Bokaro Steel Ltd (supra) in Indian Of Panipat Power Consortium Ltd Vs ITO (2009) 315 ITR 255(Del) and held that the interest eamed on funds primarily brought for infusion in the business could not have been classified as income from other sources. Further, unlike in the*

*case of M/s. Tuticorin Alkali Chemicals and Fertilizers Ltd (apra in the case on hand, the assessee had already commenced business (Para 15)*

6. The aforesaid observation was made by the ITAT while adjudicating the appeal against the order passed under section 263 of the Act by the Ld. Principal Commissioner of Income Tax for AYS 2012-13 and 2013-14. The Ld. PCIT has passed an order dated 28 March 2019, directing the AO to re-examine the treatment of interest on deposits for AYS 2012-13 and 2013-14. The ITAT quashed the order passed under section 263 of the Act and allowed the appeal of the Appellant. The said order of the ITAT was challenged before the Hon'ble Delhi High Court by the Income tax department. The Hon'ble Delhi High Court (ITA 116/2021 and ITA 118/2021) has adjudicated the substantial issue in favour of the assessee vide judgment dated 5 July 2021. The relevant paragraph of the Hon'ble Delhi High Court's judgment, wherein the treatment adopted by the Appellant has been upheld is reproduced as below:

*"The reliance placed on behalf of the revenue on the judgement of Supreme Court in Tuticorin A Chemicals & Fertilizers Limited v CITS (1997) 227 ITR 172 (SC) was not apposite, given The finding of fact returned by the Tribunal that there was a nexus between the investment of funds received from investors located abroad and the real estate project. The Tribunal in paragraph 15 of the impugned order has distinguished (and, in our view, correctly) the judgement of the Supreme Court in Tuticorin Alkali Chemicals Case and applied the later judgement of the same Court in CIT v Bokaro Steels Limited (1999) 236 ITR 315 (SC)." [para 12.1]*

*"In the instant case, it was not as if the funds were surplus and therefore invested in a fixed deposit. The funds were received for the*

*real estate project and while awaiting their deployment They were invested as a fixed deposit which generated interest. This fits in with the dicta of the Supreme Court at Bokaro Steels Case and of this Court in Indian Of Panipat Power Case NTPC Sal Power Case, and Jaypee DSC Ventures Case.” (para 14.5)*

7. Since, the matter stands adjudicated in assessee's own case by the Hon'ble jurisdictional High Court in their favour, in the absence of any change in the material facts and the legal proposition, the appeal of the assessee is hereby allowed.

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

Order Pronounced in the Open Court on 17/07/2023.

Sd/-

**(Saktijit Dey)**  
**Vice President**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 17/07/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**