

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)  
AND  
Ms. PADMAVATHY S. (ACCOUNTANT MEMBER)**

I.T.A. No.2158/Mum/2023 - A.Y. 2017-18

I.T.A. No.2159/Mum/2023 - A.Y. 2016-17

DCIT, Circle 6(3), Air India, Mumbai	vs	Karanja Terminal & Logistics Pvt Ltd 13/14, Khetan Bhavan, 3 <sup>rd</sup> Floor Plot – 198, Janshedji Tata Road Churchgate, Mumbai-400 020 <b>PAN : AADCK9709Q</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Present for the Assessee	Shri Mihir Naniwadekar
Present for the Department	Ms. N.V. Nadkarni

Date of hearing	11/10/2023
Date of pronouncement	16/10/2023

**ORDER**

**Per Bench:**

These two appeals of the revenue are against the separate orders of Commissioner of Income Tax – 54 (in short "CIT(A)"), Mumbai both dated 01/03/2023 for assessment years 2016-17 & 2017-18.

2. The only issue contended by the Revenue in both the appeals is with regard to the relief given by the CIT(A) by deleting the addition made by the Assessing

Officer holding that the interest earned by the assessee from short term investments in unutilized funds is capital receipt.

3. The assessee company was formed in the year 2010 and is in the process of developing port facilities at Karanja in the state of Maharashtra. The assessee received share capital of Rs.449.86 crores from Karanja Terminal & Logistics Ltd Cyprus Ltd. The Initial Public Offering (IPO) was raised for the specific purpose of developing multipurpose port terminal facility and logistics facility at Karanja Creek. The assessee filed the return of income on 31/03/2017 for A.Y. 2016-17 and on 12/10/2018 for A.Y. 2017-18 declaring nil income. The case was selected for scrutiny and the statutory notices were duly served on the assessee. For the assessment year 2016-17, the assessee has received an interest income of Rs.30,99,26,463/- and for A.Y. 2017-18, the assessee earned an interest income of Rs.22,00,00,010/-. The assessee had shown the interest received as a capital receipt and has not credited the said amount in the P&L Account.

4. The Assessing Officer issued a show cause notice calling on the assessee why the interest income should not be taxed as "Income from other sources". The assessee submitted before the Assessing Officer that the project of setting up the port facilities was getting delayed because of the reason beyond the control of the assessee and the unutilised funds received from IPO were kept in FDs with NBFC & banks from which the interest was received. The assessee further submitted that the interest income earned is prior to the commencement of business and, therefore, is capital receipt not liable to tax both under normal provisions as well as under section 115JB of the Act (in short, 'the Act'). The Assessing Officer did not accept the submissions of the assessee and proceeded to make addition towards the interest income for both the assessment years. The common observation made by

the Assessing Officer for AY 2016-17 & AY 2017-18 in this regard is reproduced below:-

*“6. The above submissions of the assessee is considered, however the same is not acceptable for the following reasons:*

*1. The decision relied upon by the assessee in the matter of Indian Oil Panipat Consortium Ltd. v. ITO — 315 ITR 255. subsequently followed by several ITAT' decisions as pointed out by the assessee in its application, is a subject matter of appeal to the Hon. Supreme Court under SLP No.: 15705 of 2009, which is pending disposal.*

*2. The decision of the Jaipur Tribunal rendered in the matter of Shree Cement Ltd. - ITA Nos.614, 615 & 635/Jaipur/2010 for AYs 2004 - 05. 2005 - 06 & 2006 - 07 (order passed on 09.09.2011) is a subject matter of appeal to the Hon. Rajasthan High Court, (appeal filed on 25.01.2012, lodging No.: 1074 of 2012 I IT A No.27. 28 & 29]), which is pending disposal and decision. Similarly, in respect of the ITA appeals for AYs 2007-08. 2008-09 & 2009-10 in ITA Nos.503 JP/504JP/505JP/568JP/569JP & 570JP all of 2012 reported in 152 ITD 561 (Order did.27.01.2014), an appeal has been filed to the Hon. Rajasthan High Court on 21.08.2104, under registration No.: 6380/2014 being ITA Nos.: 85 of 2014. 86 of 2014 & 87 of 2014.*

*3. On identical facts for A. Y. 2011/12 and 12/13 the assessee on its own has offered these interest incomes to tax, as income from other sources, where these orders have achieved finality and the assessee has not preferred any further appeal.*

*4. In the notes to accounts, the assessee in Sr. No.2.5 of revenue recognition has stated that all incomes and expenditure are accounted on accrual basis except where stated otherwise. Therefore, the interest on ICDs maintained with NBFCs and banks are accrual in nature and need to be offered for tax on accrual basis, which has not been done by the assessee in his return of income, since he has declared return of income as Nil.*

*5. CIT(A) has also dismissed the appeal of assessee and confirmed the issue in the favour of revenue from A.Y. 2013-14 & 2015-16.”*

5. Aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) deleted the addition by relying on the decision of the co-ordinate bench in assessee's own case for A.Y. 2013-14 to 2015-16. Aggrieved, the revenue is in appeal before the Tribunal.

6. The Ld.AR submitted that this is a recurring issue in assessee's own case from A.Y. 2013-14 onwards and that the coordinate bench of the Tribunal has been consistently holding the issue in favour of the assessee that the interest received by the assessee is capital in nature. The Ld.AR further submitted that the facts for the current year being identical, the issue is covered by the decision of the co-ordinate bench in assessee's own case.

7. The Ld.DR, on the other hand, relied on the order of the Assessing Officer.

8. We heard the parties and perused the material on record. We notice that the co-ordinate bench in assessee's own case for A.Y. 2013-14 to 2015-16 (ITA No.2472, 2473 & 5752/Mum/2018 dated 20.03.2019) has considered the similar issue and held that –

*“17. Only issue involved in the present of the assessee is that whether the interest received on FDRs/ICDs with bank/NBFCs made out of funds which could not be used in the development of the port to various reasons such as clearances from Govt. Authorities and due to the local issues. We note that the delay in the construction of port terminal was purely due to the reasons of non-issue or delayed issuance of clearances and use to local protests by the public. This is also undisputed that these funds were received as share capital solely for the development of port terminal and other facilities at Karanja Creek and were raised on Landon stock exchange by holding company M/S SKIL Guernsey a Cyprus company which was formed for the specific purpose only. The port terminal in question is yet to be commenced as is apparent from various evidences in chronology placed on records as stated below:*

<u>Sr.No.</u>	<u>Contents / Brief Description</u>	<u>Page Nos</u>
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1	<i>Letter from MMB bearing ref.no.MMB/Planning-2/KIPL/921, dd.13<sup>th</sup> Mar.2015 – Permission to carry out Capital Dredging at the Karanja Site</i>	1-4
2	<i>Letter from MMB bearing ref.no.RPO/MORA/GEN/KTLPL KARANJA/1070, dtd.28<sup>th</sup> Sept.2015 – response to project update confirming Lease Agreement continues to remain valid and in force.</i>	5
3	<i>Letter from KTPL to MMB bearing ref No.KTPL/14/15-16, dtd. 3<sup>rd</sup> Mar.2016 – Obstructions at the project site by antisocial elements (Marathi Translation”)</i>	6-7
4	<i>Letter from KTPL to MMB bearing ref No.KTPL/14/15-16, dtd 3<sup>rd</sup> March.2016- Obstructions at the project site by antisocial elements (English Translation)</i>	8-10
5	<i>Letter from Maharashtra Maritime Board bearing ref.no.MMB/Planning -1/KIPL/Maint.Dredging/249, dtd.21<sup>st</sup> Jan.2017 – granting extension for dredging/249, dtd. 21<sup>st</sup> Jan.2017-granting extension for dredging work.</i>	11
	<i>KTPL letter dated 23<sup>rd</sup> August 2017 addressed to Maharashtra Maritime Board, providing Project update of <u>Karanja Port</u></i>	12
7	<i>KTPL letter dated 4<sup>th</sup> April 2018 seeking extension of Term of Deed of Lease / Expansion of Port Limit</i>	13-17
8	<i>Letter from Maharashtra Maritime Board bearing ref. no. MMB/Planning-2/Karanja Terminal 75-201 8/2288. Dtd.11<sup>th</sup> May, 2018 extending the period o lease from 30 years to 50 years and providing additional 200 Acres land with 1000 metres of waterfront. (Marathi transcript”).</i>	18-19
9	<i>Letter from Maharashtra Maritime Board bearing ref.no.MMB/Planning-2/Karanja Terminal/75-2018/2288. Dtd 11<sup>th</sup> May, 2018 extending the period of lease from 30 years to 50 years and providing additional 200 Acres land with 1000 metres of waterfront. (English Translation).</i>	20-21
10.	<i>Letter from Maharashtra Maritime Board bearing MMB/Planning-2/Karanja Terminal/6526 dtd.22<sup>nd</sup> October 2018 – Permission to carry out trial Operation of JSW Cargo at Karanja Creek Jetty.</i>	22-23
11.	<i>KTPL letter to Maharashtra Maritime Board bearing ref.no.KTPL/MMB 7201 8/09-027 dtd 27<sup>th</sup> Sept.2018 – requesting permission to carry out trial operation of JSW Cargo at Karanja Port</i>	24-27

18. We may add that these document have no bearing on the issue involved in these appeals. However, these documents are filed just to prove various issues / problems faced by the appellant company in starting the project. It is also apparent from the above that the lease agreement granted by the Maharashtra Maritime Board has been extended from 30 years to 50 years. Maharashtra Maritime Board have further given more 200 acres land and 1000 metres of water front and even permission of the trial operation has been granted vide their letter dated 22/10/2018.

19. We observe that the above letters have no bearing on the issue to be adjudicated by us but only reinforces the stand of the that port terminal is in final stage and permission has been granted for trial run vide letter dated 22/10/2018. After taking into consideration the facts before us we have no doubt in our mind that the income by way interest is received on the unutilized funds which were directly related to the development of port and received by way of Share capital exclusively raised for the purpose of development of port terminal. Thus we have no doubt in our mind that these funds were exclusively and inextricably connected to the development of port facilities at Karanja Creek. The various decisions relied Ld AR and DR as stated hereinabove are perused and on the basis of that we hold that the interest received by the assessee during the period to the commissioning of the port is of capital receipt and cannot be taxed both under the normal provisions and under section 115JB of the Act. The decisions relied by the ld AR and DR are analysed as under:-

In the case of Bokaro Steel Ltd (Supra) the Hon'bie Supreme Court has held as under:-

- The activities of the assesses 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 contractor; pertaining to the work of construction. To facilitate the work of the contractor, the assesses 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 had provided these facilities. The same is true of the hire charges for plant and machinery which was given by the assessee to the contractor for the assessee's construction work. The receipts in this connection also go to compensate the assessee for the wear and tear on the machinery. The advances which the assessee made to the contractor 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.*

*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 of such borrowed money can be capitalised and added to the cost of the assets created as a result of such expenditure. By the same reasoning if the 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 go to reduce the cost of its assets. These are receipts of a capital nature and cannot be taxed as income.*

*The same reasoning would apply to royalty received by the assessee company for stone from the assessee company's land. The land had been allowed to be utilized 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."*

*The ratio laid down by the apex court squarely applies to the assessee's. case as it has been held by the court that when the interest on borrowings by newly started company who is in the process of erecting its plant is capitalized and added to the cost of fixed assets created as a result of such expenditure. The apex court held that by the same reasoning if the assessee receives any amounts which were inextricably linked to the setting up of the plant and machinery would go to reduce the cost of assets as the receipts are of capital nature and cannot be taxed.*

- In the case of Indian Oil Panipat Power Consortium Ltd (Supra) it has been held interest on deposits is incidental to the acquisition of assets for setting up plant and machinery and thus distinguished the decision of Tuticorin Alkali-Chemicals & Fertilisers Ltd. will not be attracted. In the present case also the interest is earned on FDRs/ICDs made out of unutilized funds meant for port development which could not be used due to various beyond the control of the . assessee.*

*Similarly, we have perused carefully the other decisions relied upon the in defense of his arguments and are of the view that the ratio coming out of those decisions squarely applies to the assessee's case. Now we relied by the id DR as under:*

*Interest on bank deposits made out of loans and borrowings for setting up the factory of the company is taxable as income from other sources. The facts of this case are distinguishable from that of assessee's case as in the assessee case the funds were raised by way share capita! and therefore not applicable arid distinguishable. In the case of Shree Krishna Polyster Ltd (Supra) the facts are distinguishable as the assessee is carrying on the business and interest on surplus funds in short term deposits with the banks was offered as business income whereas the Hon'ble Bombay Court held that such income is assessable as income from other sources. So the facts are distinguishable.*

- *Similarly, in the case of CIT Vs Rajasthan development Corporation Ltd(Supra) the facts are distinguishable as the issue was whether the interest received on surplus funds is business income or income from other sources.*
- *The Hon'ble Bombay High Court in the case of Shree Maheshwar Hydel Power Corporation Ltd., (supra) has held that interest earned is not inextricably linked to the setting up of the plant and Machinery. Further it is also given in the finding that money , raised by way of Optional Fully Convertible Debentures, were not received for setting up of the plant and machinery. This decision is not applicable on the case as in this case the money was collected under Fully Convertible Debenture. At Para (v) the Bombay High Court in the decision referred to supra while deciding the matter in the Revenue held as follows:*

*(v) In the decisions of the Delhi High Court in Sasan Power Ltd. (Supra) » and Facor Power Ltd. (Supra) the Tribunal had come to finding of fact that interest which has been earned Is In respect of deposits made In the course of/for setting ua of plant. Thus, the interest was capitalised. So far as Indian Oil Panipat Power Consortium Ltd. (Supra) is concerned, it was earned prior to commencement of business and could be set off against pre-operative expenses. The fact situation in this case is completely different. In the present facts, both the CIT (A) and the Tribunal have rendered a finding of fact that the interest earned is not inextricably linked to settins up of plant and machinery on the part of the Appellant-Assesses. It also records a finding that money by OFCD was not received for setting up of plant Therefore, cannot be capitalised. We find that on the facts as found by the Authorities, the decision of the Apex Court in Bokaro Steels Ltd. (SupraL and Kamal Co-operative Sugar Mills Lta (Supra) has besn correctly applied.*

*After perusal of the above finding of the Jurisdictional High Court, it will be clear that this decision is in favour of th8 Assesses wherein the Hon'ble Bombay High*

*Court has confirmed the view of the Delhi High Court in the case of Indian Oil Panipat Consortium Pvt. Ltd. And Facor Power Ltd. And the decision of the Hon'ble Apex Court in matter of Karnal Co-operative Sugar Mills Ltd.*

*• In the case of M/s. EMTA Steel & Energy Ltd (supra) , \ tribunal held that in case the surplus fund arises out of loans from various banks and financial institutions and the decision of the Tuticorin Alkali Chemicals & Fertilizers Ltd is applicable and accordingly the interest earned is taxable under the head Income from Other Sources.*

*The ld DR has also relied on the decision of the Hyderabad in the case of Thermal Powertech Corporation India tetdyjSupra). The facts of the case are different as in that KJ interest income was earned out of the borrowed funds. The head note of the decision slates: "where company formed to build, own and operate a power plant, deposited unutilised borrowed funds in short term fixed deposits during construction of power, plant, interest earned on those deposits was to be taxed as income from other sources - Held yes.*

*20. So far as the provisions of section 115JB are concerned , in the Asst year 2013-14 & 2014-15 the assessee has credited the interest received in the P&L account however, in the statement of total income the same is reduced being capital receipt. In the notes forming part o the financial accounts for the asst year 2013 -14 and 2014-15 it is mentioned that "Interest Income accrued during the year being in th« form of Capital Receipt, as held by the Hon'ble Courts and Tribunals, is not taxable under the normal tax provisions nor under section u/s 115JB of the Act. We observe from the records that in the AY 2015-16 the interest received on FDRs/ICDs not been credited to the profit anc loss account and was directly reduced from the capital work in progress . In the case of Indo Rama Synthetics (I) Ltd. V/s. CIT, 330 ITR 363(SC the Hon'ble Apex Court has held that the object of MAT provisions is to w^jput the real profit of the companies. The thrust is to find out th€ results of the company. Inclusion of receipt in the ton of MAT would defeat two fundamental principles, it woulc receipt which is 'not in the nature of income at all anc it would not result in arriving at real working results of the The real working result can be arrived at only after excluding this receipt which has been credited to P&L a/c and not otherwise. The case of the assessee is supported by the following decisions:*

*• In the case of Shivalik Venture Pvt. Ltd. V/s. Dy. CIT, 43 ITR(Murr Trib) 187 the issue was, profits and gains arising on transfer of capital asset by a company to its subsidiary company does not fal under definition of income .as given in section 2(24) of The Income Tax Act, 1961. Since it does not enter into computation provisions of Act, it cannot be included in book profit as per scheme of provisions of section 115 JB.*

• *In the case of DCIT Circle-1 V/s. McNally Bharat Engineering Co. Ltd., ITA No.100/Kol/2011, Dated 01703/2017(Kol Tri) the facts were<sup>1</sup> that the retention income was credited to the profit and loss account over which the assessee does not have a title and therefore cannot be regarded as income. The assessee executes turnkey contracts and under the terms of contract a certain percentage is retained and will be given to the assessee only on successful trial run of the final-acceptance by the customer .Therefore, the retention money cannot be regarded as income even for the purpose of book profits u/s. 115JB of the Income Tax Act, 1961.*

• *In the case of ACIT, Range-2, V/s. M/s. L. H. Sugar Factory Ltd., ITA NQ.417 & 418/LKW/2013(Lucknow Tri). In this sale of carbon is credited to the profit and loss account the receipt of carbon credit is a capital receipt not liable to tax, the same is required to be reduced from book profit because capital receipt cannot be considered as a part of book profit liable to tax.*

• *In the case of DCIT, c.c-XXVIII V/s. Binani Industries Ltd., 178 TTJ 658(Kol) ITAT the facts were that on receipt of forfeiture of share warrants being capital receipt would not be liable for book profits tax under section 115JB of IT Act. 1961. The genesis of Sec 115J, thereafter section 115JA and now section 115JB was to ensure that the assessee, while making profit from operations, should not enjoy tax free status due to various deductions available under the Income Tax Act. There was never any intention of the legislature to tax what is not income at all.*

• *in the case of ACIT, Circle-2 V/s. Shree Cement Ltd., ITA NO.614, 615 & 635/JP/2010.152 ITR 561 (Jaipur ITAT) the issue is as to whether sales tax subsidy received which was admittedly capital in nature can be subjected to MAT. The ITAT held that there was never any intention behind introduction of section 115JB to tax something which is not taxable at all.*

21. *In the case of Veekaylal Investment Co. Pvt.Ltd. 249 ITR 597(Bom) the Hon'ble Bombay High Court has held that direct transfer of an item to capital reserve account will not be in accordance with the requirement of the Companies Act and therefore, the AO has the power to recompute the book profit as per the Companies Act. However, the said judgement was rendered prior to the judgment of the Hon'ble Supreme Court in case of Appollo Tyres and therefore, now has no binding effect. In fact, there are subsequent Bombay High Court judgments deviating from the ratio laid down in the said judgment. Thus, the settled position now is that such capital receipts not forming part of the P&L account cannot be brought to tax" by excluding it in the book profit.*

22. Accordingly, even for the Asst year 13-14 & 14-15 interest earned is credited to the P&L account but at the same time it was mentioned in the notes to the audited statement of accounts that interest is not taxable under the normal provisions of the Act as well as u/s. 115JB the Act. In the assessment year 2015-15 the interest was not credited to the profit and loss account at all and was reduced from the capital work in progress. Finally, after considering the facts of the assessee case in the light of various decisions by the Hon'ble Apex court, Hon'ble High Court and coordinate benches, we hold that the interest income received by the assessee from the FDRs/ICDs made out of funds are inextricably linked to the development of port terminal and other infrastructure at Karanja Creek which is yet to be completed and commissioned. We would like to add that these funds could not be used for the development work of the port due to late issuance of permissions/clearances by the Govt authorities and also due to some local issues. Therefore, in our considered view the interest income is a capital receipt and is not taxable at all both under the normal provisions of the Act as well as u/s 115JB of the Act. The appeal of the assessee is allowed.”

9. The issue for the years under consideration being identical, respectfully following the above decision of the co-ordinate bench, we hold that the interest income received by the assessee is capital in nature and accordingly, not taxable under both the normal provisions of the Act as well as under section 115JB of the Act.

10. In the result, the appeals of the Revenue are dismissed.

**Order pronounced in the open court on 16/10/2023**

Sd/-

sd/-

<b>(KULDIP SINGH)</b>	<b>(PADMAVATHY S.)</b>
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt :16<sup>th</sup> October, 2023

Pavanan

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

**BY ORDER,**

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**Asstt. Registrar / Senior Private Secretary  
ITAT, Mumbai**