

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 4946/DEL/2016 [A.Y. 2013-14]

M/s Kanpur Fertilizers & Cement Ltd Vs. The Income Tax Officer
Sector - 128, Noida Ward -2(1), Noida

PAN: AADCK 9974 B

(Applicant)

(Respondent)

Assessee By : Shri V.K. Garg, Adv
Shri Praveen Kumar, CA

Department By : Shri T. James Singson, CIT- DR

Date of Hearing : 30.10.2023
Date of Pronouncement : 30.10.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - I, Noida, dated 15.06.2016 pertaining to A.Y. 2013-14.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the assessment by which the Assessing Officer has treated the interest on FDR as income from other sources.

3. At the very outset, the ld. counsel for the assessee stated that the issue is coming from earlier years wherein the Tribunal has decided it in favour of the assessee and against the Revenue. It is the say of the ld. counsel for the assessee that even the first appellate authority, while dismissing the appeal of the assessee has followed his own earlier order.

4. The ld. DR fairly conceded to this.

5. We have carefully perused the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. At Para 4 of his order, the ld. CIT(A) has categorically mentioned that ***“the issue is no longer res-integra”*** and confirming the assessment by following his own earlier order. In A.Y 2012-13, this quarrel was considered by the Tribunal in ITA No. 308/DEL/2016. The relevant findings read as under:

"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 16 ITA No. 308/Del/2016 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 de hors 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 18 ITA No. 308/Del/2016 Assessing Authority to delete the disallowance. Grounds raised in this appeal are allowed".

6. Respectfully following the findings of the coordinate bench [supra], we direct the Assessing Officer to delete the impugned addition.

7. In the result the appeal of the assessee in ITA No. 4946/DEL/2016 is allowed.

The order is pronounced in the open court on 30.10.2023 in the presence of both the rival representatives.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 30th OCTOBER, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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