

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 4455/Del/2017
(Assessment Year: 2011-12)

Addl. CIT,
Special Range-2,
New Delhi

(Appellant)

PAN:AABC8976G

Vs. Bokaro Power Supply
Company Pvt. Ltd,
4th Floor, Ispat Bhawan,
Lodhi Road, New Delhi
(Respondent)

Assessee by :	Shri M. P. Rastogi, Adv Shri PN Shastri, Adv
Revenue by:	Shri Kanv Bali, Sr. DR
Date of Hearing	08/01/2024
Date of pronouncement	12/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.4455/Del/2017 for AY 2011-12, arises out of the order of the Commissioner of Income Tax (Appeals)-2, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 488/14-15 dated 28.02.2017 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.03.2014 by the Assessing Officer, DCIT, Circle-3(1), New Delhi (hereinafter referred to as 'Id. AO').

2. The revenue has raised the following grounds of appeal:-

"(i) Whether the Ld. CIT(A) has erred in deleting addition of Rs. 79.14 made by the AO during the Course of Assessment proceedings disregarding the judgement of the Hon'ble Supreme Court in the case of Chillapalli Sugars Ltd.

"(ii) Whether the Ld. CIT(A) has erred in deleting the addition of Rs. 312.07 made by the AO during assessment proceedings as assessee has not tendered any explanation or submission during the assessment proceeding."

3. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in treating the interest earned on margin money deposits and advances amounting to Rs. 79.14 lacs to be reduced from Expenditure during Construction Period in the facts and circumstances of the case.

3.1. We have heard the rival submissions and perused the materials available on record. At the outset, the issue in dispute is squarely covered in favour of the assessee by the order of this Tribunal in assessee's own case for the Asst Year 2009-10 in ITA No. 183/Del/2013 dated 26.7.2013 wherein it was held as under:-

"3. We have heard both the sides and perused the material placed before us. The learned CIT(A) has allowed the relief with the following finding:-

"4.1 I have carefully considered the submissions made by Id.AR and have gone through the assessment order. It is seen that similar issue was decided in the case of CIT Vs. Sasan Power Ltd. on 6 January, 2012 (ITA 10/2012) by the Hon'ble High Court of Delhi as follows:-

"11. In "Indian Oil Panipat Power Consortium Ltd." (supra), it has been held that where interest is on money received as share capital, which is temporarily placed in fixed deposit awaiting acquisition of land, the claim that the interest is in the nature of a capital receipt liable to be set off against pre-operative expenses, is acceptable, since the funds infused in the assessee company by the joint venture partners are inextricably linked with the setting up of the plant and the interest earned cannot be treated as income from other sources. "Indian Oil Panipat Power Consortium Ltd." (supra) is squarely applicable to the present case, as discussed. This is in consonance with "Bokaro Steel Ltd." (supra), "Karnal Cooperative Sugar Mill" (supra), "CIT Vs. Karnataka Power Corporation", 247 ITR 268 (SC) and "Bongaigaon Refinery and Petro Chemical Co.Ltd. vs. CIT", 251 ITR 329 (SC), wherein also, it has been laid down that any receipt inextricably linked to the setting up of the project is capital receipt not liable to tax and going to reduce the cost of the project. In the present case too, the funds infused by the assessee company were inextricably linked with the setting up of the power plant. Likewise, the interest payment was also capital expenditure, which fact was confirmed by the AO, while observing the entire income of the entire expenditure was capital in nature.

12. All these facts have been duly taken into consideration by the CIT(A) while passing the order under appeal. Therefore, there is no merit in the grievance raised by the department by way of ground nos.1 & 2. Accordingly, ground nos.1 & 2 are rejected."

It is further seen that the Jurisdictional High Court of Delhi in the case of CIT Vs. Shree Ram Honda Power Equipment, 289 ITR 475 has held that

for the purposes of excluding interest receipts from business income for determining the business profit, the net interest has to be excluded and not the gross receipts. In other words, the principle of netting off has been upheld by the Hon'ble High Court of Delhi. In view of the aforesaid decision of the Hon'ble High Court of Delhi, the AO is directed to allow the netting off of interest before determining the business profit of the appellant company."

4. From the above, it is evident that the learned CIT(A) allowed the relief following the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Sasan Power Ltd. vide ITA No.10/2012 and Shree Ram Honda Power Equipment – 289 ITR 475. The Revenue has not disputed the applicability of the above decisions to the facts of the assessee's case. From ground No.2 of the Revenue's appeal, it is evident that the Revenue is disputing the matter in appeal because the Revenue has filed the SLP against the decision of Hon'ble Jurisdictional High Court in the case of Sasan Power Ltd. (supra) which is pending for adjudication. The decision of Hon'ble Jurisdictional High Court is binding upon all the authorities working within the jurisdiction of the said High Court. Therefore, the decision of Hon'ble Jurisdictional High Court in the case of Sasan Power Ltd. (supra) is binding on the ITAT as well as the CIT(A) in Delhi irrespective of the Revenue's challenge to the above decision in SLP before the Hon'ble Apex Court. Unless and until the said decision is modified or reversed by the Hon'ble Jurisdictional High Court, the same would be binding on all the authorities within the jurisdiction of Hon'ble Delhi High Court. In view of the above, we find no infirmity in the order of learned CIT(A). The same is sustained and the Revenue's appeal is dismissed.

5. In the result, the appeal of the Revenue is dismissed."

3.2. Further similar issue was subject matter of adjudication by the Hon'ble Jurisdictional High Court in the case of NTPC SAIL Power Company Pvt Ltd Vs. CIT in ITA 1238/2011 dated 17.7.2012 wherein it was held that once the interest earned on deposits kept for the purpose of business and when it is inextricably linked with the business project which is yet to be commissioned, then the entire interest income would only go to reduce the cost of the project and cannot be taxed separately as income from other sources. The Hon'ble High Court relied on the decision of Hon'ble Supreme Court in the case of CIT vs Bokaro Steel Ltd reported in 236 ITR 315 (SC) and distinguished yet another Supreme Court decision rendered in the case of Tuticorin Alkalies Chemicals Fertilizers Ltd vs CIT reported in 227 ITR 172 (SC) on facts.

3.3. Respectfully following the aforesaid judicial precedents, the issue No.1 raised by the revenue is dismissed.

4. The last issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the addition made in the sum of Rs 312.07 lakhs on account of Gross profit in the facts and circumstances of the instant case.

4.1. We have heard the rival submissions and perused the materials available on record. The business of the company is generation of thermal power, the whole of which is supplied to Bokaro Steel Plant of Steel Authority of India Limited (SAIL). The pricing of the power by generation companies is controlled by Central Electricity Regulatory Commission (CERC) which is empowered to fix the tariff and profit rates. The generation of power in a thermal power plant involves generation of steam from coal fired boilers. The steam generates power by running turbines. The whole of the power and steam generated by the company is supplied to Bokaro Steel Plant of the Steel Authority of India Limited (SAIL). There is no scrap generated in the power generation. The tariff to be charged to be earned by the company is governed by the guidelines issued by CERC , which is a statutory body created by the Government of India, which is empowered to fix the rate of return on capital and the tariff that can be charged by the power generating companies in India. The Id. AO observed that the gross profit rates had fallen during the year when compared to the earlier year. Accordingly, the Id. AO adopted the earlier year Gross profit rate and made an addition of Rs 3,12,06,930/- which was exactly the decline in gross profit figure during the year when compared to earlier year. The Id. CIT(A) deleted the said addition as it was made only on an estimated basis.

4.2. We find that the selling rate of power per unit is determined by CERC which is not in the control of the assessee. This tariff is determined by CERC and may or may not match with the prevailing market prices of cost of raw materials and direct overheads for the assessee. Hence the decline in gross profit is certainly not in the hands of the assessee. Further the books of accounts produced before the Id. AO by the assessee is not even sought to be rejected by the Id. AO by pointing out any defects thereon. Hence there is no case for the Id. AO to even resort to estimation of gross profit or net profit. Accordingly, we hold

that the Id. CIT(A) was duly justified in granting relief to the assessee in this regard. Hence the issue No. 2 raised by the revenue is dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 12/01/2024.

-Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 12/01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi