

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND**  
**SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **109/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2018-19

RKM Power Private Limited,  
No.14, Dr Giriappa Road,  
T.Nagar, Chennai – 600 017  
**[PAN: AADCR-0301-B]**

(अपीलार्थी/Appellant)

Assistant Commissioner of  
v. Income Tax,  
Central Circle -1(3),  
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri. V. Ravichandran, CA  
: Shri. A. Sasikumar, CIT

सुनवाई की तारीख/Date of Hearing

: 13.08.2024

घोषणा की तारीख/Date of Pronouncement

: 06.11.2024

**आदेश /ORDER**

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 13.12.2022 and pertains to assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:

*"1. The Order of the learned Commissioner of Income Tax (Appeals) is contrary to law and the facts of the case.*

*2. The learned Commissioner of Income Tax (Appeals) has erred in sustaining the assessment of the interest from bank deposits as Income from Other Sources.*

*3. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that such bank deposits had been made for project purposes and the interest therefrom should be deducted from the cost of the project.*

*4. The learned Commissioner of Income Tax (Appeals) ought to have directed the deduction of interest paid on the loans taken out of which the fixed deposits were made, if the interest earned assessed as Income from Other Sources.*

*5. The learned Commissioner of Income Tax (Appeals) erred in not following the decision of the Supreme Court in CIT vs. Bokaro Steel Ltd and the binding decision of the jurisdictional High Court in CIT vs VGR foundations.*

*6. The Appellant craves leave to raise additional grounds."*

3. The brief facts of the case are that, the Assessee M/s.RKM Powergen Private Limited ('appellant' or 'company') is a private limited company incorporated in the year 2004. The assessee is a Joint Venture between R.K.Powergen Private Limited ('RKP') and Mudajaya Corporation Berhad, Malaysia ('MJC") and Enerk International Holdings Limited, Seychelles ('Enerk'). The assessee was engaged in the setting up a 1440 MW coal based thermal mega power plant comprising four units of 360 MW each at Chhattisgarh State ("Project"). The Project was commissioned in phases and one phase was in operation during assessment year 2018-19. The assessee raised equity share capital as well as loan from a

consortium of lenders led by Power Finance Corporation Limited. The consortium also included several banks. In the process of implementation of the Project, the assessee had to make fixed deposits with the banks for the purpose of the Project.

3.1 The purpose for which the major fixed deposits were made are as under:

**a) Deposit in lieu of Custom Duty:**

The Government of India vide Notification No.12/2012 dated 17.03.2012 exempted custom duty on the import of capital goods by an importer engaged in Mega Power Project, provided the importer furnishes certificate regarding Mega Power Project Status and security in the form of Fixed Deposit Receipt from a Scheduled Bank for a term of thirty-six months or more in the name of the President of India for an amount equal to the custom duty payable on such imports. The appellant had made several fixed deposits pursuant to this notification.

**b) Deposits for Bank Guarantee:**

The assessee had to make fixed deposits with the Banks for providing Bank Guarantee for Custom Duty.

As these deposits were inextricably linked with the Project, the interest received from these deposits were not returned by the

appellant as Income from Other Sources but were reduced from the cost of the project for income tax purposes. Likewise, the interest paid on loans availed was also capitalised and added to the cost of the project. Since the aforesaid funds were specifically for the purpose of setting of power plant, therefore, interest earned from deposit of funds with Banks were reduced from the expenditure during construction period and adjusted against cost of the project / capital work in progress.

3.2 The assessee filed its return of income for the A.Y. 2018-19 on 29.10.2018, admitting a loss of Rs.976,44,22,042/-. The case was selected for scrutiny under CASS. During the assessment proceedings, the assessee provided details of the deposits and the purpose thereof and submitted that since the interest was received on deposits that were made for Project purposes, the interest received/accrued would have to be adjusted against the capital work in progress as detailed below:

Interest Offered as Income from other sources	Rs. 2,01,15,723/-
Interest appropriated to Capital WIP	Rs.11,28,47,897/-
Interest has been capitalised	Rs. 9,21,54,169/-

Reliance was placed on the decisions of the **hon'ble Apex Court in *CIT v Bokaro Steels Ltd* and *CIT v Karnal Co-operative Sugar***

**Mills Ltd.** However, the AO assessed the interest on fixed deposits of Rs.20,50,02,066/- as income chargeable under the head "income from other sources" by relying on the decision of the Supreme Court in the case of **Tuticorin Alkali Chemicals and Fertilizers Ltd. vs. CIT [227 ITR 172 (SC)]**. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld.CIT(A).

4. In the first appeal proceeding, the assessee submitted that the decision of the Apex Court in *Tuticorin Alkali* (supra) was distinguishable on facts since, in that case idle/surplus funds had been invested and therefore the interest was held to be assessable as income from other sources, whereas in the case of *CIT vs Bokaro Steels Ltd 236 ITR 315 (SC)* the Apex Court held that where the receipts "are inextricably linked with the setting up of the capital structure of the assessee-company, they would be viewed as capital receipts going to reduce the cost of construction."

1. The assessee further relied on the following decision of the hon'ble courts:
  - *CIT v Karnal Co-operative Sugar Mills Ltd 243 ITR 2 (SC)*,
  - Delhi High Court in *Indian Oil Panipat Power Consortium Ltd vs. ITO 315 ITR 255 (Del)*
  - *CIT vs. Jaypee DSC Ventures Ltd [2011] 335 ITR 132* ,
  - *NTPC Sail Power Company (P) Ltd vs CIT [2012] 210 Taxman 358 (Delhi)* and
  - *PCIT vs Facor Power Ltd 380 ITR 474 (Del)*.

4.1 Based on these case laws, the assessee submitted that it was a settled position in law that interest earned on deposits that are inextricably linked to the business would not be assessable under Income from Other Sources and would go to reduce the pre-operative expenses that would have to be capitalised. It was submitted that the fixed deposits made by the appellant is towards Bank Guarantee and Custom Duty which is inextricably linked with the project. In light of the above submissions and the judicial precedents, it was submitted that the assessee had rightly capitalized the interest income earned on fixed deposits against cost of the Project.

4.2 In the alternative it was submitted that, if the interest on the deposits were considered as income from other sources, then the proportionate interest paid on loans taken for such deposits must be allowed as deduction under section 57(iii) of the Act. Reliance was placed on the decision of the ITAT, Chennai in the case of DCIT vs. Chennai Network Infrastructure Pvt Ltd in ITA No.1649/Mds/2015 wherein the jurisdictional Tribunal held that 'it is clear that the appellant is entitled to claim deduction u/s.57(iii) from the interest income earned from banks on term deposits deposited with them during the pre-operative period'.

4.3 The learned CIT(A) did not accept these contentions and sustained the assessment of the interest based on the judgement of the Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Ltd. vs. CIT [227 ITR 172 (SC)].

5. In the present appeal two grounds have been raised:

- (i) The interest on deposits should not be assessed as income but reduced from the capital work-in-progress.
- (ii) Alternatively, the interest paid on project loans to the extent that they relate to the bank deposits should be allowed as a deduction.

5.1 The Ld.AR submitted that the first question arose in Assessment Years 2011-12, 2012-13 and 2016-17 and the matter travelled up to this hon'ble Tribunal. By a judgement dated 14-07-2023 in ITAs No. 577, 578 and 579/CHNY/ 2022, it was held that the interest on deposits would be taxable as income in the hands of the assessee. As such, the question has been decided against the assessee.

5.2 Further, the Id.AR stated that as regards the second question it is submitted that if the interest on deposits were to be assessed as income, then it necessarily follows that the interest on loans pro-rata to the deposits would have to be allowed as a deduction. In CIT vs VGR Foundations [2008] 298 ITR 132 (Madras), the Madras High Court had framed the following question of law:

*"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in holding that interest on moneys borrowed for the period prior to the commencement of business can be allowed as deduction from the interest under section 57 of the Act while computing 'Income from other sources' in respect of the interest received?" After discussion, the hon'ble Court held as follows: "Under the circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference."*

5.3 Thus, it is settled by a binding decision of the jurisdictional High Court that if interest on deposits is assessed as income, then the corresponding interest paid on the loans ought to be allowed as a deduction. Similar view has been held by the Chennai bench of this hon'ble Tribunal in *DCIT vs. Chennai Network Infrastructure Pvt Ltd* in ITA No.1649/Mds/2015. It may be noted that the hon'ble *Delhi High Court* in *CIT vs Sasan Power Ltd* [2012] 18 taxmann.com 182 (Delhi) held that

*"Interest paid, and interest received were inextricably linked and have a commonality about their nature and character. The appellant cannot treat them differently. Commitment Advances and interest paid and received had reference to bidding process and linked to the project/purpose for which the respondent was set up. In view of the factual matrix, interest received on unutilized commitment advances cannot be taxed as revenue income and interest paid on commitment advance treated as a capital expense. This will be contradictory".*

It is therefore prayed that the learned Assessing Officer be directed to allow as a deduction the interest paid on the project loans pro-rata to the amount of the bank deposits.

6. Per contra, the Ld.DR relied on the orders of the lower authorities and prayed for dismissing the appeal of the assessee.

7. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities. It is undisputed fact that the assessee has commenced its business activities. Therefore, the impugned addition of interest earned on deposit cannot be capitalized. We therefore uphold the order of the Assessing Officer in assessing the interest income as Income from other sources.

7.1 However, we find merit in the submission that the interest paid on loans relatable to these fixed deposits should be allowed as a deduction as held by the hon'ble Madras High Court in CIT v VGR Foundation (supra). Therefore, we are of the considered view that the assessee is eligible for claiming the related interest paid on loan u/s.57(iii) of the Act. Since, the computation of such interest is not on record, we direct the Assessing officer to compute the quantum of interest paid on loans that relate to the fixed deposits, the income from which is assessed as income, and allow the same as a deduction after verification. Thus, we allow the alternate ground of the appeal of the assessee.

8. In the result the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the court on 06<sup>th</sup> November, 2024 at Chennai.

**Sd/-**  
**(महावीर सिंह )**  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /**Vice President**

**Sd/-**  
**(एस. आर. रघुनाथा)**  
**(S. R. RAGHUNATHA)**  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 06<sup>th</sup> November, 2024

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF