

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR
BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.154/JAB/2016
A.Y. 2012-13

The Income Tax Officer, Ward-1, Satna, M.P.	vs.	M/s RPJ Minerals Private Limited, Maihar, Distt. Satna
		PAN:AACCR7044Q
(Appellant)		(Respondent)

And
ITA No.86/JAB/2022
A.Y. 2017-18

M/s RPJ Minerals Private Limited, Maihar, Distt. Satna	vs.	The Income Tax Officer, Ward-1, Satna, M.P.
PAN: AACCR7044Q		
(Appellant)		(Respondent)

Assessee by:	None
Revenue by:	Sh. Shrawan Kumar Meena, CIT DR
Date of hearing:	15.09.2025
Date of pronouncement:	19.09.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.

These two appeals have been filed by the assessee and the Revenue respectively against the orders of the ld. CIT(A)-2, Jabalpur dated 13.04.2016 and the orders of the ld. CIT(A), NFAC dated 8.08.2022. As there are common issues involved in these two orders and they were heard together, they are being taken up simultaneously for the sake of convenience. The grounds of appeal in these two cases are as under:-

ITA No.- 154/JAB/2016

- “1. On the facts in the circumstances of the case the Ld.CIT (A) has erred in deleting receipts of interest of Rs.3,14,93,819/- assessed by the AO under the head" other source of income" without appreciating actual facts of the case as interest was earned on surplus fund not required for setting of business.
2. The Hon'ble CIT(A) has erred in giving finding that the amount lying with the bank in form of FDR's is inextricably linked with the setting up of project' without mentioning the facts of the case under consideration.
- 3 Whether on the facts and in the circumstances of the case the CIT(A) has erred in placing reliance on the decision of the Hon'ble Delhi High Court in the case of Pr. COMMISSIONER OF INCOME TAX vs FACOR POWER LTD (Delhi) when particularly the facts of the cases are different to this case and are more similar t the case of the Hon'ble Supreme Court in case of M/s TUTUCRIN ALKALI CHEMICALS & FERTILIZERS LTD vs COMMISSIONER OF INCOME TAX(1997) 141 CTR (SC) 387: (1997) 227 ITR 172.
4. That the appellant reserves the right to amend/alter any of the grounds of appeal/add other grounds of appeal at the time of hearing.”

ITA No.- 86/JAB/2022

- “1. On 1. The learned CIT(A) erred in not deleting the sum of Rs.23,01,000/- being amount of Rural Infrastructure Tax paid before the due date of submission of return as details of payment are observed at para 6.1 of the appellate order and evidence of payment was on his record.
2. The learned CIT(A) erred in remanding the matter before A.O. in respect to addition u/s 43B of I.T. Act 1961 at Rs.23,01,000/- for verification even though complete evidence for payment of Rural Infrastructure Tax was available on record.
3. The learned CIT(A) ought to have deleted the addition of Rs.23,01,000/- made by A.O. u/s 43B of I.T. Act 1961 considering the evidence on record.
4. That the authorities below has brushed aside the assessee's explanation that the Dead Rent of Rs. 1,56,603/- is not a part of statutory dues nor an expenditure; which is in the nature of tax, duty, cess or fee to which provisions of section 43B of I.T. Act, 1961 could be invoked.
5. The learned CIT(A) ought to have deleted the addition of Rs.14,21,215/- assessed under the head income from other sources after having concluded that the issue is covered in favour of assessee by the orders of CIT(A) in the earlier assessment years.
6. The learned CIT(A) erred in not deleting the addition of Rs. 14,21,215/- on the basis of orders of appellate authorities in the case of assessee for past assessment years.
7. The assessee denies liabilities to pay interest u/s 234A, 234B and 234C of I.T. Act 1961, Without prejudice, levy of interest under section 234A, 234B and 234C of I.T. Act 1961 is unjustified, unwarranted and excessive.
8. Any other ground that shall be prayed at the time of hearing.”

2. We may take up ITA No. 154/JAB/2016 in the first instance. The facts of the case are that the assessee is engaged in the development of mining of minerals such as dolomite, limestone, fluorite, china clay, alumina, graphite, gypsum, bauxite, silica, granite, orine ore kynite and other types of minerals. It filed its return on 4.07.2014 declaring a total loss of Rs.8,95,787/-. The assessment was completed under section 143(3) on a total income of Rs.3,37,43,820/-. During the course of assessment proceedings, the ld. Assessing Officer observed that the assessee was in receipt of an interest on FDRs aggregating to Rs.3,14,93,816/-, but had not offered the same as income from other sources. Rather it had adjusted the same in its capital work in progress as capital receipts. During the course of assessment proceedings, it explained to the ld. AO that it earned this interest amount by temporarily placing a part of borrowed funds in short term deposit with a scheduled bank, but these deposits continued to form part of funds that were required for the implementation of the project and they were not spare or surplus funds. It was submitted that the purpose of making the short term deposits, was to make efficient use of the project capital and thereby reduce the cost of the project to the extent possible. It was not an attempt to take funds out of the project and create an independent source of income. Since, the funds deployed in short term deposits continued to be inextricably linked with the mining development project therefore, the interest received on these deposits were treated as capital receipts going to reduce the cost of the project and

therefore, it was credited to the pre-operative expenditure of the capital work in progress. However, the ld. AO, relying on the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (1997) 227 ITR 172 (SC), concluded that the interest earned by the assessee prior to the commencement of business on short term deposits with bank out of term loans secured from financial institutions was income chargeable under the head, "income from other sources" and would not go to reduce the interest payable by the assessee which would be capitalized after the commencement of commercial production. Thus, the amount of Rs.3,14,93,816/- was added back as income from other sources.

3. Aggrieved with this decision of the ld. AO, the assessee went in appeal before the ld. CIT(A). Before the ld. CIT(A), it was submitted that the investment in capital work in progress as on 31.03.2012 was Rs.25.04 Crores and on 31.03.2013, it was Rs.73.49 Crores. Thus, the business of the assessee had not commenced even upto 31.03.2013. Reference was invited to the working of capital work in progress as contained on page 2 of assessment order and it was submitted that same would show that interest capitalized in work in progress was Rs.748.09 Lacs and interest received of Rs.314.93 Lacs had been reduced for computing the net work in progress at Rs.25.04 Crores. It was submitted that long term borrowings as well as share capital of assessee was raised for acquiring capital assets and for the setting up of the project. Thus, the amount borrowed as well as the share capitals were inextricably

linked with the setting up of the project of the assessee company. They had been raised for making investment in the plant and machinery and for setting up the project. Some amount of the same had been kept in fixed deposit of the bank in order to obtain a bank guarantee as well as providing security in the course of carrying on activity of setting up the project by the assessee company. Thus, the investment in the FDR was inextricably linked with the setting up of the project of the assessee company. In view of this factual position, the assessee, after considering the ratio laid down by the Hon'ble Supreme Court in the case of Commissioner of Income tax vs. Bokaro Steel Limited (1999) 236 ITR 315 (SC) had reduced interest received from the capital work in progress, which also included the capitalization of interest paid on the amount borrowed, at Rs.748.09 Lacs. It was submitted that the facts of the assessee's case were distinguishable from the facts of the case in the case of Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (1997) 227 ITR 172 (SC). The case of the assessee was not that of surplus funds being invested in short term deposits but rather the capital raised for acquiring for capital assets and setting up of project, being temporarily deposited in the bank for bank guarantee as well as providing security and thus the same was inextricably linked with the setting up of the project. It was submitted that the case of the assessee was akin to the case of Indian Oil Panipat Power Consortium vs. ITO, wherein the Hon'ble Delhi High Court in its judgment reported in (2009) 315 ITR 255 (Delhi), had after considering the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers

Limited vs. CIT (supra) concluded that pre-commencement interest would go to reduce the work in the progress. It was submitted that the said decision of the Hon'ble Delhi High Court had been cited before the Assessing Officer but not accepted by him even though the facts of the assessee's case had not been disputed by the Assessing Officer. The assessee placed further reliance on the decision of the Hon'ble Delhi High Court in the case of Pr. CIT vs. Facor Power Limited (2016) 130 DTR 281 (Del) where the money raised by the assessee by way of share capital for setting up of power plant was put in FDR for temporary period of three months till the order for machinery was placed. On the above facts, the Hon'ble Delhi High Court concluded that the investment in FDR was inextricably linked with the acquisition of plant and machinery and the interest received would go towards reducing the capital work in progress. It further held that the amount invested could be borrowed both by way of loan or by share capital but that would not differentiate whether the interest raised on such deposits could reduce capital work in progress. It was submitted that the facts of the assessee's case being similar, the ratio would apply squarely to the facts of the assessee's case. The assessee also placed reliance on the decision of the Hon'ble Supreme Court in CIT vs. Karnataka Power Corporation (2001) 247 ITR 268 and CIT vs. Karnal Cooperative Sugar Mills Limited (2000) 243 ITR 2 (SC). In view of the same, it was pleaded that the additions made by the Assessing Officer was unjustified. The Id. CIT(A) considered the submissions made by the assessee and particularly its submission that the Hon'ble Delhi High Court in the case of Indian Oil

Panipat Power Consortium Limited vs. ITO 315 ITR 255 (Del) had, after considering both the decisions of the Hon'ble Supreme Court rendered in the case of Tuticorin Alkali Chemicals and Fertilizers Limited and Bokaro Steel Limited, concluded that the interest earned during the period of pre-commencement of business out of funds available for setting up project, would be of capital nature and cannot be assessed under the head, "income from other source". The ld. CIT(A) held that a perusal of the assessment order did not indicate that the AO had distinguished the said case to be inapplicable to the facts of the assessee's case. The ld. CIT(A) recorded that the facts in the case of the assessee, where the fund had been borrowed for setting up of projects and in the course of setting up of project, the available fund had been kept in the bank from where interest had been derived, were similar to that of Facor Power Limited where the Hon'ble Delhi High Court in its recent decision reported in 130 DTR 281 (Del) had held that where there was a finding of fact that the money placed in the fixed deposit was inextricably linked with the setting up of the power plant, the revenue generated on account of interest on the said fixed deposits, would be in the nature of Capital receipt and not Revenue receipt. The ld. CIT(A) pointed out that the facts and evidence on record merely evidenced that the assessee had obtained funds by raising share capital and long term borrowings for setting up of the mining project. In the course of setting up of the project, temporarily part of the funds were deposited in the bank on which interest was earned. It was not a case of surplus or idle fund invested to earn interest. Since the fund was raised with the primary idea of

setting up of project, the Revenue derived from the utilization of the same, could not be dehors from the purpose from which the money is raised. Since the amount lying in the bank was inextricably linked with the setting up of the project, the interest received on the same could be nothing but capital receipts to be adjusted against capital work in progress. The Id. CIT(A) also pointed out that in the following cases, the ITAT had also concluded that interest received during pre-commencement of business, out of funds available for setting up of the project, was inextricably linked with the setting up of the project and thus was on capital account and could not be assessed under income from other sources.

i. ITAT Mumbai Bench in ITA No.7745 & 7746/MUM/2012 in the case of Kaygee Loparex India Pvt. Ltd. Vs. ACIT (OSD), Mumbai., vide order dated 28.10.2015

ii. ITAT Lucknow Bench in ITA No.625 & 626/LKW/2013 in the case of M/s Prayagraj Power Generation Co. Ltd., vide order dated 26.02.2016

iii. ITAT Ahmedabad Bench in ITA No.2755/AHD/2011 in the case of Adani Power Ltd., vide order dated 27.07.2015.

Thus, the Id. CIT(A) considered the aforesaid judgments and came to the conclusion that the case of the assessee was completely covered by the judgment of the Hon'ble Delhi High Court in the case of Pr. CIT vs. Facor Power Limited (supra) and therefore, a sum of Rs.3,14,93,816/- is on capital account and could not be assessed under the

head, "income from other sources". Accordingly, the addition made by the AO was deleted.

4. The facts of the assessee's case in ITA No.86/JAB/2022 are somewhat similar. In the assessment year 2017-18, the assessee filed a return of income showing a total loss of Rs.29,97,675/-. The ld. AO observed that during this assessment year also, the business of the assessee had not been set up and it was still at the implementation stage. Therefore, for the year under consideration, the company did not perform any operational activities. During the relevant financial year, the assessee earned interest from temporary short term deposit with a scheduled bank. The Assessing Officer asked the assessee to show cause as to why the interest of Rs.14,21,215/- earned on fixed deposits should not be assessed income from other sources, in view of the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (1997) 227 ITR 172 (SC). The assessee once again submitted that the deposits continued to form part of the funds required for the implementation of the project. They were not spare or surplus funds. The purpose of making the short term deposits was to make efficient use of the project capital and thereby to reduce the cost of the project to the extent possible. Since, the funds deployed in the short term deposit continued to be inextricably linked with the mining development project, the interest earned there from was on capital account and had been rightly adjusted against capital work in progress. The ld. AO took note

of the fact that the ld. CIT(A) had passed an order against the Department but submission of the same was under appeal before the ITAT and the matter was still subjudice. Therefore, after noting the fact that part of the term loan taken by the assessee company had been deposited as a security deposit with M/s Tiger Hill Resort under an agreement dated 15.11.2011 for the purposes of mining development and operation and prior to the security deposit, interest had been earned on short term deposits in FDR, he held that since the assessee had yet to start commercial production, the interest received would be adjusted against interest paid on borrowed funds i.e. the netting of interest received against interest payable would reduce the revenue receipt, which was otherwise taxable. He held that since the interest received had been adjusted against the interest expense, the same could not be a capital receipt when the interest had been received from the fixed deposit. Therefore, holding that the facts of the assessee's case were similar to that of Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (supra), he made the addition in the hands of the assessee.

5. Besides this, the ld. Assessing Officer made one more addition. He noted that the assessee had not made payment of statutory dues of Rs.25,41,229/- of the F.Y. 2016-17 before the due date of the filing of the income tax return. He, therefore, asked the assessee to show cause as to why the same should not be added back to the income of the assessee and upon receiving a reply which suggested that TDS of Rs.

50,0000/- have been deposited before the due date of the filing of the return, he gave relief for the same and added back an amount of Rs. 24,91,229/- under section 43B of the Act.

6. Aggrieved with the said addition, the assessee took note of the matter to the Id. CIT(A), NFAC. On the issue of non-payment of statutory dues, it was submitted that rural infrastructure tax amounting to Rs.23,01,000/- (out of total amount of Rs.23,20,613/-) had been paid between 8.05.2017 and 29.05.2017. It was further submitted that the VAT of Rs.14,013/- that was due, had been paid on 19.04.2017. With regard to Dead Rent, it was submitted that, that was not an expenditure in the nature of tax, duty, cess or fee to which the provisions of section 43B would apply. Therefore, it was prayed that no disallowance with regard to the same was justified other than the sum of Rs.19,613/- on account of short payment of rural infrastructure tax and VAT. However, the Id. CIT(A) held that no evidence had been submitted before him with regard to this and therefore, he directed the assessee to submit the evidence before the Assessing Officer to whose file he restored the matter for examining the evidence and taking action as per law. On the issue of taxing the interest from short term deposits as an interest from other sources, the Id. CIT(A) took notice of the arguments made by the assessee and noted that in the assessment years 2012-13 and 2013-14, similar additions made by the Assessing Officer had been deleted by the Id. CIT(A). He also noted that the Department had filed appeal

before the ITAT and he directed the Department to apply the decision of the ITAT on this issue for the impugned order as well i.e. the ld. CIT(A) did not take a decision on either of the two issues in which the assessee went in the appeal.

7. The Department is aggrieved at the decision of the ld. CIT(A) in ITA No.154/JAB/2016 and has accordingly appealed against the same whereas the assessee is aggrieved against the failure of the ld. CIT(A) to take a decision on either matter in ITA No.86/JAB/2016 and on his failure to delete the additions made by the Assessing Officer.

8. On the appointed date of hearing, when the case was called out, no one appeared on behalf of the assessee. It was seen from the records that more than seven opportunities had been provided to the assessee in respect of ITA No.154/JAB/2016 and three opportunities had been provided to the assessee and the Department in ITA No.86/JAB/2022, without any response. Accordingly, it was decided to proceed with and decide the appeals on the basis of the materials available on the record without giving further opportunity. However, ld. CIT DR, Sh. Shrawan Kumar Meena, assisted the Bench during the course of proceedings. He submitted that assessee had not brought out the reason for the short term deposit and therefore its case was covered by the Hon'ble Supreme Court judgment in the case of Tuticorin Alkali Chemicals (supra). Accordingly, he prayed that the orders of ld. CIT(A) be reversed and the orders of the AO be confirmed. On the issue of

payment of statutory dues he submitted that the assessee had not submitted evidences of payment before the Id. AO or Id. CIT(A) leading to the disallowance, but had no objection to the matter being sent back for verification of facts.

9. We have duly considered the facts and circumstances of the case and the orders of the lower authorities. We have also had occasion to go through the orders cited by the lower authorities while rendering their decision and before we adjudicate on the issue, it is important to recount the gist of the orders of the various judicial authorities on the subject of interest earned on short term deposits prior to the commencement of business. The Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (supra) was confronted with the fact that the assessee, for the purposes of setting up of the factories, had taken term loans from various banks and financial institutions. That part of the borrowed fund which was not immediately required by the company (and thereafter referred to as the surplus by the Hon'ble Court) was kept invested in short term deposits with the banks. The question that arose before the Hon'ble Court was whether, in the facts and circumstances of the case, the interest derived by the assessee from the borrowed funds which were invested in short term deposits with the banks, would be chargeable to tax under the head, "income from other sources" or would go to reduce the interest payable by the assessee on the term loans secured by the assessee from financial institutions, which would be capitalized after the commencement of

commercial production?” The Hon’ble Court held that in the usual course, interest received by the assessee from bank deposits and loans, would be taxable as income under the head, “income from other sources” under section 56 of the Income Tax Act. It pointed out that there were six separate heads of income under which the income had to be computed and there were specific rules of deductions and allowances under each head. The Hon’ble Court held, that if a company had not commenced business, there cannot be any question of assessment of its profits and gains of business but that did not mean that its income from other sources would not be taxed. In that case, the company had chosen not to keep its surplus idle but had decided to invest it fruitfully. The Hon’ble Court held that the fruits of such investment would clearly be of Revenue nature. In other words, if a capital of a company was fruitfully utilized instead of keeping it idle, the income thus generated would be of Revenue and not Capital nature. How the company raised the capital would not make any difference to the principle. Thus, if borrowed capital was used for the purpose of earning income that income would have to be taxed in accordance with law and the Hon’ble Court distinguished income as something which flows from the property as opposed to something which was received in the place of property, which was a capital receipt. Since, the interest received by a company flows from its investments and its income and it was clearly taxable, even though the interest was earned by utilizing borrowed capital and could not be adjusted against expenditure on interest payment, because section 57 of the Act laid down the expenditures which

were allowable as deduction from the income assessable under section 56. Therefore, it held, that however, desirable that may be from the point of view of equity, this adjustment could not be made until the law specifically permitted such adjustment. It also rejected the argument that accounting practice pointed to allowing the set off, holding that the same could not override the law. The Hon'ble Supreme Court specifically referred to judgments of the Hon'ble Andhra Pradesh High Court in the case of CIT vs. Nagarjuna Steels Ltd., (1988) 171 ITR 663 and the Hon'ble Bombay High Court in the case of CIT vs. Maharashtra Electros melt (1995) 214 ITR 489 and held that the reasonings followed in those judgments, that the background of raising the fund by borrowing and temporary utilization of a portion of that fund by keeping the same in deposit with the bank, was to show that the interest was earned for the purpose of reducing the liability of the assessee, but the Hon'ble Supreme Court held that if money was borrowed for business purposes and subsequently utilized to earn interest, however temporarily, the interest so generated would be income. Furthermore, the application of the income for payment of interest or any other activity could not affect its taxability. It distinguished the principle of capitalization of interest payable as laid down by the Court in the case of Challapalli Sugars Limited vs. CIT (1975) 98 ITR 167, by pointing out that whether a particular receipt was in the nature of income and fell within the charge of section 4 of the Income Tax Act was a question of law, which had to be decided on the basis of the provisions of the Act and the interpretation of the term, "income" given in a number of decisions by

various Courts. The Hon'ble Supreme Court thus affirmed the view taken by the Hon'ble Madras High Court in the case of CIT vs. Seshasayee Paper Boards & Ltd., 156 ITR 543, that the interest earned by the assessee on investment of share capital in call deposits, even before production commenced, could be assessed separately under the head, "other sources" and rejected the view taken by the Hon'ble Andhra Pradesh High Court in the case of CIT vs. Nagarjuna Steels Ltd., 171 ITR 663, where it was held that interest received on short term deposits by a company prior to commencement of production, could not be treated as Revenue receipt. The matter was, thereafter, discussed again by the Hon'ble Supreme Court in the case of Commissioner of Income Tax-II, Patna, Bihar vs. Bokaro Steel Ltd., Bokaro in Civil Appeal Nos. 2544-45 of 1988 pertaining to assessment year 1972-73 and Civil Appeal Nos. 642-48 of 1989 pertaining to assessment years 1965-66 to 1971-72, where the question before the Hon'ble Court was whether hire charges received by the assessee company for letting out plant and machineries were taxable, whether interest on advances given to contractors was taxable and whether royalty received from contractors was taxable or not. It is pertinent to note that the Hon'ble Supreme Court, in the said judgment, took note of the judgment in Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (supra) with regard to the investment of amounts, borrowed by the company for construction work, that were not immediately required in short term deposit and earned interest and pointed out, that in the case of the assessee, it has been held that receipt of interest from such deposits amounted

to income of the assessee from other sources, which the assessee had not filed any appeal in respect of. The Hon'ble Supreme Court went on to state that in any case, this question now stood concluded by a decision of the Hon'ble Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (supra) and therefore, they were not being called upon to examine that issue. The Hon'ble Supreme Court thereafter pointed out that while interest earned by investing borrowed capital in short term deposits, is an independent source of income not connected with the construction activities or business activities of the assessee company, the same could not be said of in the case before it where utilization of various assets of the company and payments received for such utilization were directly linked with the activity of setting up of the steel plant by the assessee. Those, receipts were inextricably linked with the setting up of the capital structure of the assessee companies and must therefore be viewed as capital receipts, going to reduce the cost of construction. Thus, the Hon'ble Supreme Court in effect re-affirmed the decision in Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (supra), vide its decision in Bokaro Steels Ltd., that any interest earned on short term deposits of capital borrowed for setting up a business, prior to the commencement of the business will be taxed under the head, "income from other source".

10. In the matter of CIT vs. Karnal Cooperative Sugar Mills Limited (2000) 243 ITR 2 (SC), the Hon'ble Supreme Court had occasion to consider a matter where the

assessee had deposited money in a bank to open a letter of credit for the purchase of machinery required for setting up its plant in terms of the assessee's agreement with the supplier and of what the treatment should be on interest earned on money so deposited. The Hon'ble Supreme Court held that this was not a case where any surplus share capital money which was lying idle had been deposited in the bank for the purpose of earning interest, but the deposit of money was directly linked with the purchase of plant and machinery. Hence, any income earned on such deposit was incidental to the acquisition of assets for setting up of the plant and machinery. In view of the same, the ratio laid down in Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (supra) would not apply but rather the judgment in the case of CIT vs. Bokaro Steel Limited would apply.

11. The Hon'ble Delhi High Court thereafter considered this issue in the case of Indian Oil Panipat Power Consortium vs. ITO in ITA No.1156 & 1157 of 2007. The facts in that case were that the Indian Oil Corporation and Marubeni Corporation of Japan set up a joint venture for establishing a power project in Panipat and it was expected that the project would be set up by the end of the F.Y. 2000-01. For this purpose, share capital was contributed by Indian Oil Corporation and Marubeni Corporation of Japan primarily for the purchase of the land and development of infrastructure. However, due to legal entanglements with respect to title of land, in the interregnum, the funds acquired by way of share capital were put in a fixed

deposit with the Tokyo Mitsubishi Bank by the assessee. The Hon'ble Court was called upon to decide what would be the treatment of interest earned on such deposits. The Hon'ble High Court that the test which permeated through the judgment of the Hon'ble Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (supra) was that if the funds had been borrowed for setting up of a plant and if the funds were surplus then by virtue of that circumstance, they are invested in fixed deposits, the income earned in the form of interest will be taxable under the head, "income from other sources" but as laid down by the Court in Bokaro Steel Limited (supra) if the income was earned whether by way of interest or any other manner on funds which are otherwise inextricably linked to the setting up of the plant, such income is required to be capitalized to be set off. The Hon'ble Court was of the opinion that the investment made by the assessee was for the purposes of business therefore and it could not be held that the income derived by parking the funds temporarily with Tokyo Mitsubishi Bank would result in the character of the funds being changed. Since the funds have been infused for specific purpose of acquiring land and development infrastructure, the interest earned on funds brought in for that purpose, could not have been classified as income from other sources. The Hon'ble Delhi High Court held that in the case of Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (supra), it was found by the authority that the funds available with the assessee in that case were, "surplus" and it was in that context that the interest earned on such funds was to be treated as, "income from other sources"

but in Bokaro Steel Limited, where the assessee earned interest on advances paid to contractors during pre-commencement period, the Court had found the same to be inextricably linked to the setting up of the plant of the assessee and hence this was held to be a capital receipt which was permitted against pre-operative expenses. For this logic, the Hon'ble High Court relied upon the decision of the Hon'ble Supreme Court in the case of Challapalli Sugars Limited vs. CIT (1975) 98 ITR 167, wherein the Hon'ble Supreme Court had referred to section 208 of the Companies Act which gave statutory recognition to the principle of capitalizing the interest in case the interest was paid on money raised to incur expenses of construction of any work or building or the provision of any plant, in contingencies mentioned in that section, even though such money constituted share capital and held that the situation in the instant case was quite similar except that instead of paying interest on funds brought in for specific purpose, the interest had been earned on funds brought in by way of share capital for a specific purpose. The Hon'ble Court held that if in the first situation, the interest could be capitalized; there was no reason why it could not be capitalized in the second case. Therefore, it held that the funds infused in the assessee by joint venture being inextricably linked with the setting up of the plant, the interest earned by the assessee on short term deposits of such funds could not be treated as income from other sources. The matter was thereafter, considered again by the Hon'ble Delhi High Court in the matter of PCIT vs. Facor Power Limited in ITA No. 1011/2015. In this case, the assessee had received interest from State Bank of Mysore as interest on

fixed deposits, but reduced the said interest amount from capital work in progress and therefore, the assessee was required to explain why the said interest income should not be treated as income from other sources. The assessee submitted that it had earned interest on FDRs which were placed in the bank as margin money for procurement of various capital goods for setting up of the power plant. The ld. AO did not accept this and made the addition which was subsequently deleted by the ld. CIT and the Hon'ble ITAT. The Hon'ble Court held that findings of fact had been rendered by the CIT(A) and confirmed by the ITAT, that the interest earned on FDRs were inextricably linked with the acquisition of plant and machinery by the assessee company and therefore, following the decision in Indian Oil Panipat Power Consortium Limited, it held that interest on the said fixed deposits would be in the nature of Capital receipt and not a Revenue receipt.

12. What therefore emerges from a reading of all these judgments, is that if funds have been borrowed for a setting up of the business and are invested in short term deposits for the duration when they are not immediately required, then the income from such short term deposits would have to be assessed under the head, "income from other sources" as laid down by the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (supra) and Bokaro Steel Limited (supra). If, however, the deposit itself was made for a purpose which was intrinsically linked to the setting up of the business, then in accordance with the

Hon'ble Supreme Court in the cases of Bokaro Steel Limited (supra) and Karnal Cooperative Sugar Mills Limited (supra) such interest would not be assessed under the income from other sources, but should then be taken up according to the ratio laid down in Bokaro Steel Limited i.e. they should be capitalized and reduced from the cost of assets, because such receipts would be of capital nature and could not be taxed as income. In two circumstances, i.e. when capital was infused and could not be immediately utilized due to certain legal issues and when deposit was made as margin money to secure a loan for the purchase of plant and machinery, the Hon'ble Delhi High Court has held that they can be regarded as capital receipts. So the most important fact that emerges from a study of these judgments is that the individual facts of the assessee's case would have to be examined to determine the reason for the short term deposits. At various points of time, different submissions have been made by the assessee. At one point of time, it has been stated that in order that the funds should not be kept idle, they had been invested in short term deposits, so that the capital could be made more productive. If that were the case, then going by the logic in Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (supra), the same should be brought to tax under income from other sources. However, on other instances, it has also been submitted that the money was deposited in the bank as security for obtaining bank guarantees and also deposited as security with Tiger Hill Resorts for the purposes of mining development and operation. If the short term deposits have been made for these purposes, then going by the ratio laid down by the

Hon'ble Supreme Court in Bokaro Steel Limited (supra) and Karnal Cooperative Sugar Mills Limited (supra), the interest derived on such deposits are to be treated as capital receipts and can be used to reduce the cost of capital assets. However, we find that in the two assessment years, the ld. AO has not rendered any definite finding on the nature of the short term deposits, which in our view is crucial to determine how the interest therefrom would be treated. We also notice that the ld. CIT(A) have also not delved into this issue in any detail. In assessment year 2012-13, the ld. CIT(A) has simply pointed out, that the facts of the assessee's case are similar to that in the case of Pr. CIT vs. Facor Power Limited, without elaborating upon the same. In the assessment year 2017-18, the ld. AO has drawn reference to the fact of some part of the term loan was deposited as security with M/s Tiger Hill Resorts and prior to that, as short term deposits in banks. However the nature of these short term deposits has not been elaborated. Since, the determination of the nature of the deposits is important to decide how the interest is required to be treated, within the ratios laid down by the various judgments of the Hon'ble Supreme Court, we deem it appropriate in the interest of justice to both parties to restore this matter to the file of the ld. AO in both assessment years so that the assessee may present evidences before the ld. AO to demonstrate that the short term deposits in the bank were made for purposes inextricably linked to the business of the assessee and thereafter the ld. AO may take a fresh decision in accordance with law, in view of our analysis of the various court judgments, as rendered above. Accordingly, ITA No. 154/JAB/2016 is

allowed for statistical purposes while ground numbers 5 and 6 of the ITA No.86/JAB/2022 are also restored to the file of the ld. AO and held to be allowed for statistical purposes.

13. In the assessment year 2017-18, it is observed that the ld. CIT(A) has sustained the addition amounts of Rs.23,01,000/- relating to Rural Infrastructure Tax paid before the due date of submission of return and also not addressed the assessee's explanation, that Dead Rent of Rs.1,56,603/- was not a part of statutory dues or an expenditure in the nature of tax, duty, cess or fee to which the provisions of section 43B of the Income Tax Act may apply. The ld. CIT(A) has refused to delete the addition of Rs.23,01,000/-, on the grounds that no evidences have been furnished before him in this regard. Accordingly, we deem it appropriate to restore this matter back to the file of the ld. AO so that the assessee may furnish the necessary evidences in this regard and the ld. AO may thereafter allow the relief under section 43B, if the evidence so warrants. We also restore the matter of payment of Dead Rent of Rs.1,56,603/- to the file of the ld. AO, so that the assessee may submit before the ld. AO as to how the provisions of section 43B are not attracted in respect of this amount and the ld. AO may thereafter take a decision in accordance with law. Accordingly, ground nos. 1 to 4 of ITA No.86/JAB/2022 are also restored to the file of the ld. AO and are held to be allowed for statistical purposes. In view of the fact that all the issues have been restored to the file of the ld. AO, ground no. 7 regarding the liability

for interest is rendered infructuous and is dismissed as such. No additional ground having been preferred, ground no. 8 is also rendered infructuous. Accordingly, the assessee's appeal in ITA No.86/JAB/2022 is held to be partly allowed.

14. In the result, ITA No.154/JAB/2016 is held to be allowed for statistical purposes while ITA No.86/JAB/2022 is held to be partly allowed.

Order pronounced in the Open Court on 19/09/2025.

Sd/-
[KUL BHARAT]
VICE PRESIDENT
DATED: 19/09/2025
Sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.