

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “G” BENCH: NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.4100/Del/2025
[Assessment Year : 2021-22]**

Max Square Ltd. L-12, Max Tower, Sector-16-B Gautam Budha Nagar Noida, Uttar Pradesh-201301 PAN-AAGCN5808G	vs	ITO Ward-5(1)(5) Noida
APPELLANT		RESPONDENT
Appellant by	Shri Anil Bhalla, CA & Shri Nitin Kumar Sharma, CA	
Respondent by	Shri Gouranga Chandra Das, Sr. DR	
Date of Hearing	08.12.2025	
Date of Pronouncement	13.02.2026	

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by assessee against the order dated 30.05.2025 of Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld. CIT(A)”] in Appeal No. NFAC/2020-21/10308419 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of assessment order dated 07.12.2023 passed u/s 143(3) r.w.s. 144B of the Act pertaining to Assessment Year 2021-22.

2. Brief acts of the case are that the assessee is a company, engaged in the business of real estates development and started construction of commercial complex project “Max Square” at sector

129, Noida. The assessee borrowed funds from Indusind Bank amounting to INR 29.45 crores for the construction and further raised funds through issue of Equity/CCD's. The funds which remained un-utilized, were invested temporary in FDRs from which interest was received of INR 63,77,502/- and was credited to the cost of construction. However, the AO has held the same as taxable under the head "Income from Other Sources".

3. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 30.05.2025, confirmed the addition made by the AO and dismissed the appeal of the assessee.

4. Aggrieved by the order of Ld. CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1. *"The Learned CIT(A) has erred both on facts and in law in confirming the addition of ₹ 63,77,502 made by the Assessing Officer under the head "Income from Other Sources" without appreciating that the said interest income arose from the temporary investment of surplus funds which were inextricably linked to the capital borrowed for the purpose of constructing the real estate project "Max Square." The CIT(A) failed to consider that such interest is capital in nature and should have been adjusted against the cost of the asset, in accordance with judicial precedents.*
- 1.1. *The Learned CIT(A) has erred both on and in law in disregarding the binding judicial pronouncements of the Hon'ble Supreme Court in the case of Bokaro Steel Ltd. [1999] 236 ITR 315 (SC), and the Hon'ble Delhi High Court in the cases of NTPC Sail Power Company (P) Ltd. [2012] 25 taxmann.com 401 (Del) and Indian Oil Panipat Power Consortium Ltd. [2009] 315 ITR 255 (Del), which have clearly held that interest earned from temporary parking of borrowed funds intended for project development is inextricably linked to the setting up of the project and hence constitutes a capital receipt not liable to tax.*

- 1.2 *The Learned CIT(A) has erred both on facts and in law in failing to appreciate that the assessee had borrowed capital specifically for the construction and development of a commercial real estate project and had also raised funds via CCDs and equity for the same purpose. The temporary parking of such funds in fixed deposits was necessitated by the time gap deployment, and the interest earned thereon was adjusted against the project cost, thereby not yielding any real income.*
- 1.3 *The Learned CIT(A) has erred both on facts and in law in rejecting the explanation and evidences submitted by the assessee without establishing that the interest income earned was not inextricably linked to the project. The CIT(A) did not bring any material on record to show that the surplus funds were unrelated to project borrowings or were idle surplus.*
- 1.4 *The Learned CIT(A) has erred both on facts and in law by not considering detailed submissions, evidences, and legal precedents cited by the assessee during the appellate proceedings, thus violating the principles of natural justice and rendering the appellate order non-speaking and unsustainable in law.”*

5. All the grounds of appeal raised by the assessee are in respect to the action of AO in treating the interest income as taxable as “Income from Other Sources”, therefore, all these grounds are taken together for consideration.

6. Heard both the parties at length and perused the material available on record. Admittedly, interest was earned on FDRs made by the assessee. The assessee claimed that funds which remained un-utilized for a short period were invested in FDRs to reduce the cost of construction and therefore the interest so received was credited to the construction cost account which ultimately reduced the cost of the project. However, the AO by placing reliance on the judgement of Hon’ble Apex Court in the case of **Tuticorin Alkali**

Chemicals & Fertilizers Ltd. [1997] 227 ITR 172 (SC), has treated the same as “Income from Other Sources”.

7. On perusal of the facts, it is observed that the assessee has borrowed funds from Indusind banks as well as through CCDs, on which interest is payable. Therefore, when the funds remained idle for short period, they were temporarily invested only for that period in FDRs and thus had direct communication with the acquisition of the assets and should be treated as capital receipts. The revenue placed reliance on the decision of Hon’ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) where the Hon’ble Apex Court had examined an identical situation. The question which was referred to the Supreme Court is as follows:

"Whether, on the facts and in the circumstances of the case, interest derived by the assessee from borrowed funds which were invested in short term deposits with 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 loan secured by the assessee from financial institutions which would be capitalised after commencement of commercial production?"

8. In that case, assessee borrowed funds from various banks and financial institutions to set up a factory and idle funds were invested in short term deposits with banks. The interest received on such deposits was capitalised. The matter travelled to hon’ble Supreme court where the Apex Court after examining the facts of the case, made following observations:

"It is true that the company will have to pay interest on the money borrowed by it. But that cannot be a ground for exemption of interest earned by the company by utilizing the borrowed funds as its income. It

was rightly pointed out in the case of Kedar Narain Singh v. CIT [1938] 6 ITR 157 (All) that "anything which can properly be described as income is taxable under the Act unless expressly exempted ". The interest earned by the assessee is clearly its income and unless it can be shown that any provision like section 10 has exempted it from tax, it will be taxable. The fact that the source of income was borrowed money does not detract from the revenue character of the receipt. The question of adjustment of interest payable by the company against the interest earned by it will depend upon the provisions of the Act. The expenditure would have been deductible as incurred for the purpose of business if the assessee's business had commenced. But that is not the case here. The assessee may be entitled to capitalise the interest payable by it. But what the assessee cannot claim is adjustment of this expenditure against interest assessable under section 56. Section 57 of the Act sets out in its clauses (i) to (iii) the expenditures which are allowable as deduction from income assessable under section 56. It is not the case of the assessee that the interest payable by it on term loans is allowable as deduction under section 57 of the Act. If that be so, under which other provision of law can the assessee claim deduction or set-off of his income from other sources against interest payable on the borrowed funds? There are specific provisions in the Income-tax Act for setting off loss from one source against income from another source under the same head of income (section 70), as well as setting off loss from one head against income from another (section 71). In the facts of this case the company cannot claim any relief under either of these two sections, since its business had not started and there could not be any computation of business income or loss incurred by the assessee in the relevant accounting year. In such a situation, the expenditure incurred by the assessee for the purpose of setting up its business cannot be allowed as deduction, nor can it be adjusted against any other income under any other head. Similarly, any income from a non-business source cannot be set off against the liability to pay interest on funds borrowed for the purpose of purchase of plant and machinery even before commencement of the business of the assessee."

9. It is thus observed that facts of the present case are identical to the facts in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) where the Hon'ble Apex Court has answered a similar question against the assessee. Therefore, the interest received by the assessee on temporary deposit of funds which are not required immediately has to be assessed as 'Income from other sources' and cannot be set off against the cost of project. The assessee borrowed

the funds for the purpose of construction of commercial complex. So long as the assessee uses the funds in the construction, it could be said that the assessee has utilised the funds for the purpose of business. However, admittedly assessee has deposited the funds in FDR's for temporary period, since the same was not required immediately. As observed by the Hon'ble Apex Court in Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) the interest earned by the assessee by investing the borrowed fund which was not required immediately in fixed deposit has nothing to do with the actual borrowing. The payment of interest has no connection with the receipt of interest. Admittedly the borrowing has not been made for the purpose of earning interest income in which case alone the interest received by the assessee can be deducted from the interest payable.

10. The assessee relied upon the judgement of Hon'ble Supreme Court in the case of ***CIT Vs. Bokaro Steel Ltd. [1999] 236 ITR 315 (SC)*** however, the facts of the said case are entirely different and the proposition of law laid down by Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers has not been overruled or distinguished by Hon'ble Supreme Court in the case of Bokaro Steel Ltd. (supra). In that case, the company had received certain income from the contractor who was assigned the job of constructing the factory. During the course of construction activities carried on by the contractor, the contractor had availed certain facilities and services from the company and paid certain consideration to the company. The nature of the services and consideration/income

received by the company from the contractor were (i) Let out of its dwelling units to the contractor which were used for the purpose of housing the workers/labourers and staff for construction work; (ii) Hire charges received by the company from the contractor in connection with hiring of the plant and machinery owned by the company to the contractor which were used by the contractor in the construction work; (iii) Interest received by the company from the contractor on account of advances made to the contractor which were used for the purpose of construction work of the factory by the contractor; and (iv) Royalty received by the company from the contractor in connection with permitting the contractor to excavate / mine the stones from the land owned by the company which were used in the construction activity of the company.

11. Looking to such peculiar nature of above stated income, the Hon'ble Supreme Court held that the income received by the company from its contractor is inextricably linked with the setting up of the factory building / capital structure of the company and, therefore, such income has to be treated as capital receipt going to reduce the cost of construction of the assessee company. It is also relevant to state at this stage that in the case of Bokaro steels, AO has held the interest income received by the company on short term deposits made with banks out of the amounts borrowed by it for the construction work which were not immediately required, as taxable income under the head "Income from other sources". The said addition was accepted by the company and appeal was filed against

such finding. Under these circumstances, the hon'ble Apex Court made at Para No.4 of its order observed that "we were not called upon to examine this issue" and further made a reference that in any case, this question now concluded by the decision of Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers (supra).

12. In view of above facts and the circumstances of the case, it cannot be construed that the interest earned on unutilized borrowed funds is inextricably linked with the construction of the project started by the assessee company. Thus, by respectfully following the judgement of hon'ble Supreme court in the case of Tuticorin Alkali Chemicals & Fertilizers (supra), we do not find any infirmity in the order of Id. CIT(A) who uphold the action of the AO by placing reliance on the judgement in the case of Tuticorin Alkali Chemicals & Fertilizers (supra). Accordingly, the same is confirmed.

13. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 13.02.2026.

Sd/-

**(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

Date:- 13.02.2026

Amit Kumar, Sr.P.S

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

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