

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.569/Ind/2025

(AY: 1992-93)

Deputy Commissioner of Income Tax- 4(1) Indore	<u>बनाम/</u> Vs.	Maral Overseas Ltd. Maral Srovar, V & PO, Khalbujurg, Kasrawad, Khargone, Bhopal (PAN: AACCM0230B)
(Appellant)		(Respondent)
Assessee by	Shri Satyajeet Goyal, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	03.02.2026	
Date of Pronouncement	27.02.2026	

आदेश / ORDER

Per Paresh M Joshi, J.M.:

This is an Appeal filed by the Revenue under section 253 of the income tax Act 1961,[herein after referred to as the Act for the sake of brevity] before this Tribunal. The Assessee is aggrieved by the order bearing Number:-1045/21-22 dated 22.07.2022 [DR NO.-31/10 D.No.-104] passed by the Ld. CIT(A) u/s 250 of the Act, which is herein after referred to as the

"Impugned order". The relevant assessment year is 1992-93 and the corresponding previous year period is from 01.04.1991 to 31.03.1992.

2.

Factual Matrix

2.1 That as and by way of an "**Assessment order**" made u/s **143(3) r.w.s. 254** of the Act wherein it was held that the interest amount of **Rs. 1,51,54,534/- is income from other sources**, [The total loss as per last order passed u/s 143(3)/250 dated 03.11.1999 was at Rs. 1,69,39,343/-]. That the aforesaid assessment order is dated **31.12.2009** which is herein after referred to as the "**Impugned Assessment Order**".

2.2 That it is required to be noted that the assessment u/s 143(3)(in this case) was originally made on **08.03.1995**. Later on the matter reached to ITAT, Indore Bench in ITA No. 289/IND/02 and the ITAT, Indore Bench vide order dated **16.05.2008** [For this Assessment Year] set aside the Assessment order to re-decide on a **particular issue**. [Discussed later]

2.3 The core issue in the Assessment was regarding the treatment of the interest received of Rs. 1,51,54,534/- on the proceeds of Public Issue deposited with the Banks. The said interest was received before the commencement of Commercial Production which was offered by the assessee as income from "Other Sources". However, by way of a Note it was claimed that the interest is "not taxable" & that the same be reduced from the preoperative expenses & accordingly also reduced from the cost of the Assets. This claim was not accepted by the then AO & that he assessed the said interest as " income from other sources" in an order u/s 143(3). The then Ld. CIT(A) confirmed the action of the Ld. AO. The matter then reached to ITAT, & the ITAT by an order (supra) restored the matter to back to the Ld. AO with certain directions. The submission of the Assessee & gist of the ITAT order dt. 16.05.2008 are recorded in the "**Impugned Assessment Order**" which is reproduced by us as below:-

" 3. In these proceedings the company filed a detailed reply which for the sake of clarity is being reproduced here under: -

"The Hon'ble ITAT Indore Bench Indore in ITA No. 289/IND/2002 for AY 1992-93 vide order dated 16.05.2008, has restored to re-decide, in the light of the decision of Hon'ble Supreme Court in the case of Bokaro Steel Ltd. (236 ITR 315) and Kamal Co-operative Sugar Mills Limited (243 ITR 2) as well as in the light of the decision of Hon'ble Madras High Court in the case of VGR Foundation P. Ltd. (2008) 298 ITR 132, the issue of treatment of interest of Rs. 1,51,54,534/- received by the company from various banks on share application money. In this respect the relevant undisputed facts, also taken note of by Hon'ble ITAT are as under: -

- a. The assessee has received income of Rs. 1,51,54,534/- as interest from various banks on share application money and deducted the*

said receipt from pre-operative expenses in its books of accounts. In the original return filed on 31.12.1992 the company offered the said amount as income from other sources and adjusted the capitalisation of pre-operative expenses for the purposes of claiming depreciation for the income tax return.

- b. In the revised return filed on 16.07.1993, the company though offered the said interest as income from other sources, however, it was claimed by way of a note appended to the return of income that the said income is not taxable and have been rightly deducted from pre-operative expenses*
- c. The assessment order was passed u/s 143(3) on 08.03.1995 where in the Assessing Officer has not discussed the assessee's claim and has only recorded that the assessee has disclosed income of interest on share application money of Rs. 1,51,54,534/- as the income of the year in the revised return. Since*

the claim made by the assessee company through a note appended to the return was not entertained by the AO, the company took the matter before the CIT (A). The assessee claimed that the said amount be either reduced from pre operative expenses or be deducted from the interest paid to banks which was capitalised.

- d. It was submitted before the learned Commissioner of Income tax (Appeals) that as per requirements of section 73 of the Companies Act, it was obligatory on the part of the assessee to deposit the share application money received by it in separate bank account maintained with any scheduled bank. The assessee could not use the said amount for a specific period as prescribed under section 73 of the Companies Act. The attention of the learned Commissioner of Income tax (Appeals) was drawn to the order passed by his predecessor in the case of Neo*

Sack Limited for the assessment year 1994-95 wherein these requirements of the Companies Act have been referred to and discussed. The assessee also took support from the decision of the Hon'ble Supreme Court in the case of Vellore Electric Corporation; 227 ITR 557. Reliance was also placed on other decisions as per the written submissions.

- e. *The learned Commissioner of Income tax (Appeals) considering the submissions of the assessee found that it was not in dispute that the said income has been received prior to the date of commercial production and that it was under legal compulsion to deposit the share application money in separate bank account but these facts do not change the basic nature and character of receipt. The learned Commissioner of Income tax (Appeals) held that the said receipt is nothing but income of the assessee for earning the same and that the assessee did not incur any cost. The*

learned Commissioner of income tax. (Appeals) referring to the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals; 227 ITR 172 held that the said receipt has been rightly assessed and dismissed this ground of appeal of the assessee.

f. The assessee carried the matter before the Hon'ble ITAT, which has decided on this issue in ITA no. 289/IND/02 on 16.05.2008 and restored the matter for reconsideration. The Hon'ble ITAT has accepted the proposition of the assessee that the facts of Tuticorin Alkali Chemicals 227 ITR 172, relying on which the Learned CIT (A) has decided this issue against the assessee, are clearly distinguishable. The Hon'ble ITAT has categorically stated that the decision in the case of Tuticorin Alkali Chemicals has no applicability to this case. The relevant observation of the Hon'ble Bench have been abstracted here under: -

16. We have considered the rival submissions and the material available on record. It is not in dispute that the assessee received the above interest income from various banks on share application money. The learned Commissioner of Income tax (Appeals) accepted the claim of the assessee that the said income has been received prior to commercial production of the assessee and that the assessee was under legal compulsion to deposit the share application money in separate bank account. These facts would clearly prove that the assessee as per the Companies Act deposited the share application money with the scheduled bank on which he had no control over the same. The assessee therefore, earned the interest incidentally on the same. The decision in the case Tuticorin Alkali Chemicals (supra) has no applicability to the case because in that case the interest earned on short term deposit out of borrowed funds which were not immediately utilized for setting up of the factory. This decision would not support the findings of the learned Commissioner of Income tax (Appeals). The Hon'ble and Kamal Co-op. Sugar Mills Limited (supra) held that if Supreme Court in the case of

Bokaro Steel Limited (supra) interest income is intrinsically linked to set up project before commencement, then it is capital receipt and would reduce the capital investment. It is an admitted fact that the interest income has been received prior to the date of commercial production. It is also admitted that the assessee was under legal obligation/compulsion to deposit the share application money in the separate bank account and on that account the assessee earned the interest. The authorities below have thus failed to note these important facts while rejecting the claim of the assessee. The authorities below have also failed to give the finding of fact whether interest income so earned on share application money had any link with the setting up of the project before the commencement. The learned counsel for the assessee while referring to decision of Hon'ble High Court of Madras in the case of VGR Foundation (supra) has referred to the observations of the Hon'ble High Court of Madras in para 5 of the above judgment which distinguished the decision in the case of Tuticorin Alkali Chemicals (supra) and also referred to observations of the Hon'ble High Court of Madras

to the effect that the share application money, etc. are gathered for being used for setting up of an industry, unit, purchase of assets and so on. It therefore, appears from the aforesaid decisions that the assessee has prima facie ease for allowing the deduction on this issue. However considering the facts and circumstances of the case and that the authorities below have not given any finding to the effect whether the interest income is intrinsically linked to set up project before the commencement of production, we are of the view that the matter requires reconsideration at the level of the Assessing Officer in the light of the decision of the Hon'ble Supreme Court in the case of Bokaro Steel Limited (supra) and Karnal Co-op. Sugar Mills Limited (supra). The contention of the learned Departmental Representative is rejected with regard to bona fide of the claim of the assessee in appending note with the return of income because the learned CIT(A) considered this issue on which the revenue is not in appeal. It is also very well settled that note given or filed in the return of income is a part of return of income. If the assessee would not have any justification to claim the expenditure, then it would not have

appended the note with the return of income. The contention of the learned Departmental Representative is therefore rejected. We therefore, set aside the orders of the authorities below and restore this issue to the file of the Assessing Officer with the direction to re-decide this issue in the light of the decision of the Hon'ble Supreme Court in the case of Bokaro Steel Limited (supra) and Kamal Co-op. Sugar Mills Limited (supra) as well as in the light of the decision of the Hon'ble High Court of Madras in the case of VGR Foundation (supra). The Assessing Officer shall decide the issue by giving reasonable opportunity of being heard to the assessee.

(vii) In light of the above observation of the Hon'ble Bench the matter has been remitted back for Your Honour's consideration. The documents filed before the H'ble ITAT, though are, all on record, are being filed again, for ready reference. Some of the facts which will have a bearing in deciding the issue are as under.

- 1. The company's public issue opened for subscription on 3rd September 1991. The cost of*

the project was pegged at Rs. 3400 Lacs which was mainly on account of land, building, plant & machinery and other fixed assets. The means of finances were to the tune of Rs. 1336 lacs by way of capital from promoters and public, Rs. 509 lacs by way of term loan, Rs. 1545 lacs by way of foreign currency loan and Rs. 10 lacs by way of subsidy from the state government. The issue was slated for closing on earliest by 6th September 1991 and latest by 14th September 1991. The issue was an unprecedented success and was over subscribed by 75 times. The issue was made at par. Copy of the prospectus is enclosed.

- 2. As accepted by the Hon'ble CIT (A) and also by the Hon'ble ITAT the proceeds of the issue by virtue of section 73 of the Companies Act, were required to be kept separately till the allotment is finalize. The proceeds of the public issue are*

required to be kept in separate bank accounts and the company cannot appropriate the funds unless the approval of the stock exchange is obtained for allotment. The company was obliged to complete the allotment process within 10 weeks from the date of the closing of the issue.

- 3. Accordingly the company has deposited the proceeds with various banks on which it has earned this interest of Rs. 1,51,54,534/-. All the deposits were realized in Oct & Nov 1991 és evident from the TDS certificates issued by these banks which are already already on record. The company commenced part commercial production from 1st February 1992 as evident from the annual accounts note no. 7. Therefore the interest was received before the commencement of commercial production."*

2.4 In the “**Impugned Assessment Order**” at para 4 it is also recorded as under :-

“4. At the time of public issue the company was at an advanced stage of construction of its manufacturing facilities and was in dire need of funds. Had there been no statutory compulsion of the Companies Act, the company would -not have kept the funds with banks on a lower rate of interest rather would have immediately deployed the proceeds in the construction activities. Had this been the case, the company would have incurred lower interest cost on its term loans as the term loans would have been utilised from a later date. The details of interest paid on term loans is already available on record as the same was submitted during the initial assessment proceedings. If need be the same can be filed again.

Therefore it is clear that the company has received the interest of Rs. 1,51,54,534/- prior to commencement of commercial production. It is not the

case of investment of surplus money. It is not the case of earning interest on short term deposits of surplus funds, out of borrowed funds, not immediately required for setting up of the projects. This fact has also been accepted by the Hon'ble Tribunal while distinguishing the facts of Tuticorin Alkali Chemical P. Ltd. (227 ITR 172). At this juncture we wish to point out that in the order passed u/s 143(3), a separate addition of Rs. 17,79,605/- was made by the AO in respect of interest earned on deposit of surplus fund not immediately required for the project. This addition was also confirmed by the Learned CIT (A).

Coming to the observation of Hon'ble ITAT in Para 16 of the order where in after considering the observations of Hon'ble Madras High Court in the case of . VGR Foundations (298 ITR 132) in Para 5 it has been stated that "It therefore, appears from the aforesaid decisions that the assessee has prima facie

case for allowing the deduction on this issue". It will be worthwhile to quote from Para 5 abstracted in CIT (A) vs. VGR Foundations (298 ITR 132) Madras

"In our opinion, in view of the above clear cut ruling by the Supreme Court it is necessary to give a finding of facts in regard to monies that were kept in deposit from out of the share application monies. In the light of the Supreme Court decision in Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra), it is only in the event of interest earned from out of deposits made from borrowed funds that it would be in the nature of income. Share application monies do not fall into the category of borrowed funds and do not involve payment of interest. In effect share application money etc. are gathered for being used in setting up of an industry, unit, purchase of assets, and so on. Till such time the money is required for deferment of various

items, obviously the money has to be kept in deposit with a bank, Keeping the money in current account would not yield any interest income. It can therefore be seen that it is during the course of construction that the monies are kept in deposits with the banks. In these circumstances in the light of the Supreme Court decisions in the cases of Bokaro Steels Ltd. (supra), Karnal Co-operative Sugar Mills Ltd. (supra) and Kamataka Power Corporation (supra), the claim of the assessee is reasonable and deserves to be accepted. We accordingly uphold the claim of the assessee and delete the addition of interest made to the income. The legal plea was insisted upon."

Therefore, in the above case, it seems that surplus share application money not immediately required for the project, was deposited, on which interest was earned. In the present case since the amount was

deposited out of statutory compulsion, otherwise would have gone to reduce the interest on term loan, which has been capitalised, and also for the reason that the same was received prior to commencement of commercial production and also for the reason that the public issue was basically for setting up of the manufacturing facilities, hence the interest received is directly linked and is required to be adjusted against pre-operative expenses and cannot be assessed as income from other sources."

2.5 The Ld. AO in the **"Impugned Assessment Order"** has observed & held as under :-

"The issue has been considered. The direction of the Hon'ble ITAT has also been taken into consideration. The relevant directions have been reproduced by the assessee in its reply already abstracted above and hence are not being reproduced here again. The assessee has earned interest on proceeds of public issue deposits which is not in dispute. However the

fact that the said interest has been received prior to commencement of commercial production does not change the nature of income. There is no cost associated with this income. The said income cannot be said to be directly related to setting up of the project. Every public issue is made to setup some projects. Therefore simply for the reasons that the public issue was made to set up the project, will also not help the assessee. The fact that the proceeds were required to be kept in separate bank account by the provision of Companies Act, will also not, in any manner alter the nature of income. The fact remains that the interest received is income for all practical purposes. It has no connection, what so ever, with the setting up of the project and hence cannot be allowed to be adjusted against the cost of fixed assets.

“Therefore I hold that the interest of Rs. 1,51,54,534/- is income from other sources and the same is being taxed accordingly”

2.6 That the assessee being Aggrieved by the aforesaid **“Impugned Assessment Order”** prefers the first appeal u/s **246A** of the Act before the Ld. CIT(A) who by the **“Impugned Order”** has allowed the 1st appeal of the Assessee on the grounds & reasons stated therein. The core grounds & reasons are as under:-

“ 7. I have carefully considered the assessment order and submissions of the appellant. Ground no. 1 of the appeal is directed against the action of the AO in treating the interest received on proceeds of public issue, deposited with Banks before commencement of commercial production, amounting to Rs. 1,51,54,534/- as Income from other sources liable to tax. The appellant has contended that this interest of Rs. 1,51,54,534/- is not taxable and as such deductible from pre-operative expenses and accordingly deductible from the cost of assets. The appellant stated that the Hon'ble ITAT principally decided the issue in favour of the appellant by holding that interest earned from parking share capital

money in bank before commencement of business is of capital nature and is liable to be adjusted against cost of fixed asset. However, the issue was restored back to the file of assessing officer for limited purpose of verification with the directions that if the share-capital so raised is intrinsically connected with setting up of the project, the interest earned on same is not taxable and is rightly adjustable against pre-operative expense and cost of fixed asset. However, in the consequent order passed by the AO he has held that it is not in dispute that the assessee has earned interest on proceeds of public issue deposits prior to commencement of commercial production but the fact that the said interest has been received prior to commencement of commercial production does not change the nature of income and the said income cannot said to be directly related to setting up of the project. The AO has also remarked that simply for the reason that the public issue was made to set up the project, will also not help the assessee and the fact that the proceeds were required to be kept in a separate bank account will also not alter

the nature of income. The appellant has stated that the share capital was raised in order to generate funds for setting up manufacturing facility and as such same is directly connected with setting up of the project. The prospectus alongwith supporting details in order to demonstrate the purpose an nexus between raising of funds and setting up of manufacturing facility were duly filed before Hon'ble ITAT as well as before assessing officer. In fact, the assessing officer has not even disputed the fact that share capital was utilized in setting up manufacturing facility which is self evident from following finding of the AO:

"Every public issue is made to set up some projects. Therefore simply for the reasons that public issue was made to set up the project, will also not be the assessee."

7.1. I have carefully considered the order of Hon'ble ITAT, Indore, consequent on u/s 143(3) r.w.s. 254 of the I.T. Act as well as the submissions of the appellant. The ITAT had

remanded the case for the limited purpose of verification as to whether fresh share capital was linked to the setting up of the project, and if so, the AO was directed to give the benefit of capitalizing the interest amount, thereby reducing the cost of assets. The said directions are quite clear as evident from the relevant portions thereof reproduced below:

"The Hon'ble Supreme Court in the case of Bokaro Steel Limited (supra) and Kamal Co-op. Sugar Mills Limited (suprn) held that if interest income is intrinsically linked to set up project before commencement, then it is capital receipt and would reduce the capital investment....."

The authorities below have also failed to give the finding of fact whether interest income so earned on share application money had any link with the setting up of the project before the commencement....."

It therefore appears from the aforesaid decisions that the assessee has prima facie case for allowing the deduction on this issue. However considering the facts and circumstances of the case and that the authorities below

have not given any finding to the effect whether the interest income is intrinsically linked to set up project before the commencement of production, we are of the view that the matter requires reconsideration at the level of the Assessing Officer in the light of the decision of the Hon'ble Supreme Court in the case of Bokaro Steel Limited (supra) and Kamal Co-op. Sugar Mills Limited (supra)."

7.2. It is therefore clear that the ITAT had remanded the case for the limited purpose of verification as to whether the fresh share capital was linked to the setting up of the project, and if so, the AO was directed to give the benefit of capitalizing the interest amount, thereby reducing the cost of assets. Instead of giving a reasoned finding regarding linkage or otherwise of interest income with setting up of the project, the AO has simply denied the said linkage without giving any reasons and also remarking in the process that simply for the reason that public issue was made to set up the project, will not help the assessee since every public issue is made to set up some projects. This observation is in direct conflict with

the directions of Hon'ble ITAT, which has held that if the proceeds of the public issue are linked to setting up of the project, the AO should allow capitalization of the interest earned on such proceeds. It is further observed that the AO has failed to examine the issue of linkage as per the directions of ITAT, which required examination of the issue in the light of judgements of Hon'ble Supreme Court in the case of Bokaro Steel Limited (supra) and Kamal Co-op. Sugar Mills Limited (supra). Be that as it may, the said issue was examined during the appellate stage, and the findings in this regard are as follows.

7.3. From a comparative analysis of the audited financial statements of FY 1990-91 and 1991-92, the following position emerges w.r.t. the increases in share capital, term loans and gross value of fixed assets.

*"Fund utilised for setting up the Project as on
31/03/1992*

Amount in '000

Particulars	31.03.1992	31.03.1991	Increase
	A	B	C(A-B)
<i>Gross value of fixed assets*</i>	3,90,736	2,993	3,87,743

<i>Capital Work in progress*</i>	11, 754	24,604	-12,850
<i>Add: Interest income earned on IPO Proceeds which was reduced from the value of fixed assets</i>	15154.534	0	15,155
Total outflow on acquisition of fixed assets	4,17,645	27,597	3,90,048
<i>Term loans for acquisition of fixed assets #</i>	2,63,684	22,950	2,40,734
<i>Share capital (net of calls in arrears) \$</i>	1,53,151	18,468	1,34,683
Total inflow for meeting cost of fixed assets	4,16,835	41,418	3,75,417
Excess amount utilized for acquisition of fixed assets from internal accruals	810	-13,821	14,631

7.4. During the year under consideration, there was an increase in share capital to the extent of Rs. 13,46,83,000/- due to the proceeds of the IPO, which were temporarily placed in a separate bank account as mandated under the Companies Act. Further, there was an increase of term loans of Rs. 24,07,34,000/- specifically taken for acquisition of fixed assets, as emerging from the relevant schedules to the statement of accounts, which is extracted below:

Schedules to statement of accounts

	As at 31.3.1992	As at 31.3.1991
	Rs. In 000's	Rs. In 000's

1. Share Capital		
Authorised		
200,00,000 Equity shares at Rs. 10 each	<u>2,00,000</u>	<u>1,50,000</u>
Issued, Subscribed & Paid up		
153,64,000 Equity shares at Rs. 10 each	1,53,640	1
	<u>489</u>	<u>-</u>
Less: Calls in arrear	1,53,151	1
Share application money pending allotment	<u>-</u>	<u>18,467</u>
	<u>1,53,151</u>	<u>18,468</u>
2. Reserve and Surplus		
Surplus as per Profit & Loss Account	<u>5,116</u>	<u>-</u>
	<u>5,116</u>	<u>-</u>
3. Secured Loans		
From Financial Institutions		
Rupee Term Loans	78950	22,950
Foreign Currency Loans (Rupee-tied)	1,84,734	-
From Banks		
For working Capital	<u>69,053</u>	<u>-</u>
	<u>3,32,737</u>	<u>22,950</u>

7.5. Thus, the total inflow from increase in share capital and dedicated term loans was Rs. 37,54,17,000/-. As against this, the gross value of fixed assets has increased from Rs. 29,93,000/- in FY 1990-91 to Rs. 39,07,36,000/- in FY 1991-92, resulting in an increase of Rs. 38,77,43,000/-, which when adjusted for the capital work in progress and interest earned from IPO proceeds, gives a

resultant figure of Rs. 39,00,48,000/- on account of total outflow on acquisition of fixed assets. In this manner, the total inflow of Rs. 37,54,17,000/- approximately matches the total outflow of Rs. 39,00,48,000/- on account of acquisition of fixed assets, giving a small excess amount of Rs. 1,46,31,000/- utilized for acquisition of fixed assets from internal accruals. It is therefore clear that the entire increase in share capital of Rs.13,46,83,000/- during the year has been completely utilized towards the acquisition of fixed assets and hence it is clear that the IPO proceeds are inextricably linked to the setting up of the plant. Such being the case, the interest income earned from temporary parking of IPO funds is hereby allowed to be set-off from the capital cost of the project, in accordance with the directions of Hon'ble ITAT. Ground no. 1 is accordingly allowed.

8. Ground no.2 is general in nature and does not require separate adjudication.

9. In the result, the appeal is Allowed."

2.7 The Revenue being aggrieved by the **"Impugned Order"** has preferred the instant second appeal before this Tribunal & has raised the following grounds of appeal in the Form No. 36 against the **"Impugned Order"** which are as under:-

"1. Whether on the facts and circumstances of the case, the Ld. CIT(A)-31, New Delhi was justified in holding that the interest income earned from temporary parking of IPO funds was not taxable as it was of capital nature and not revenue?"

2. Whether on the facts and circumstances of the case, the Ld. CIT(A)-31, New Delhi was justified in holding that the interest income earned from temporary parking of IPO funds was of capital nature as it was earned on share application money to be used for setting up of the plant, without appreciating the fact that the Hon'ble ITAT held that the Assessing Officer should decide whether the interest earned on share application money had any link with the setting up of the project before the

commencement, and not whether the share application money had any link with the setting up of the project?

3. *Whether on the facts and circumstances of the case, the Ld. CIT(A)-31, New Delhi was justified in inferring the finding of the assessing officer that it was immaterial whether the public issue was used for setting up the project, as the intent of deposit was to be examined in view of the judgments quoted by the Hon'ble ITAT?*

4 *Whether on the facts and circumstances of the case, the Ld. CIT(A)-31, New Delhi was justified in ignoring the fact that the assessee was under the obligation to keep the share application money in a separate bank account and the allowable bank account for the company, being current account does not yield any interest income and the question of treatment of interest income would not arise as per provisions of Section 73 of Companies Act, 1956?*

5. *Whether on the facts and circumstances of the case, the Ld. CIT(A)-31, New Delhi was justified in concluding that the total inflow of funds in share capital has been*

completely utilized towards the acquisition of fixed assets by referring to few particulars of Balance Sheet and not all ?.

6.The order of the Ld. CIT(A)-31, New Delhi is perverse, erroneous and is not tenable on facts and in law.

7. The grounds of appeal are without prejudice to each other ?

8. The appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either on or before the final hearing of the appeal."

3.

Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 03.02.2026 when the Ld. DR for & on behalf of the Revenue appeared before this Tribunal & inter alia contended that the **"Impugned Order"** is bad in law, illegal & not Proper. It therefore deserves to be set aside. It was next contended that the registry of this Tribunal has pointed out the delay of 975 days in preferring the present appeal. The **"Impugned Order"**

is dated 22.07.2022. The date of service of the “**Impugned Order**” is dated **05.08.2022**. The appeal was e-filed on 02.07.2025 which period is well beyond the statutory time limit of 60 days. In this regard the Revenue has placed on the record of this Tribunal a letter dated 16.12.2025 by virtue of which the Revenue has prayed that the delay be condoned. In the said letter a detailed explanation is given by the Revenue on delay in filing the instant appeal. The contents of the said letter is reproduced by as below :-

“

3/2/26



भारत सरकार

Government of India

वित्त मंत्रालय (राजस्व विभाग)

Ministry of Finance (Department of Revenue)

OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX-4(1), INDORE

Main Building, Aayakar Bhawan, White Church Road, Residency Area, Indore - 452001

Phone: 0731-2496011, Fax 0731-2497170. Email: indore.dcit4.1@incometas.gov.in

F.No. DCIT-4(1)/Ind./ITAT/Maral Overseas Ltd./2025-26

Dated:16/12/2025

To,

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The Commissioner of Income Tax(DR),
The Income Tax Appellate Tribunal,
CGO Building, Indore

(Kind attention-ITO)



Sir,

Sub: Appellate proceedings in the case of Maral Overseas Ltd., ITA No.
569,570 & 571/Ind./2025 for A.Y. 1992-93, 2004-05 & 2006-07, reg.

Ref: - Your good office letter bearing F.No. Sr.(AR)/ITAT/Ind./2025-26/495
dated 10.12.2025

Kindly refer to the above.

2. Vide above referred letter, it is directed to this office to furnish detailed report regarding filing of appeal before the Hon'ble ITAT, Indore in pursuance to the order of ITAT, Delhi Bench 'E', New Delhi in the case of above mentioned assessee for A.Y. 1992-93, 2004-05 & 2006-07.
3. In this regard, it is submitted that Hon'ble ITAT, Delhi Bench 'E', New Delhi passed a consolidated order on 29.01.2025 in the case of M/s Maral Overseas Ltd., Khergore in the following A.Yrs. Details of the same are as under: -

Sr.	Name of the assessee	A.Y.	ITA No.
1.	Maral Overseas Ltd	1992-93	ITA No. 2426/DEL/2022
2.	Maral Overseas Ltd	2004-05	ITA No. 2427/DEL/2022
3.	Maral Overseas Ltd	2006-07	ITA No. 2428/DEL/2022

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4. In the said order, the Hon'ble ITAT, Delhi dismissed the appeal of the department observing that assessment orders were passed by the Jurisdictional Assessing Officer, Range-5, Indore. Therefore, the Hon'ble ITAT directed to file appeal before the Jurisdiction ITAT, Indore as assessment orders were passed by the AO of Jurisdiction of Indore.

5. Thus, as per direction of the Hon'ble ITAT, New Delhi, appeals for A.Ys. 1992-93, 2004-05 & 2006-07 have been filed before the Hon'ble ITAT, Indore Bench on 02.07.2025. The said order was passed by the Hon'ble ITAT, New Delhi on 29.01.2025 and the same was received in the office of the CIT(Judicial), New Delhi on 03.04.2025.

6. Earlier, vide email dated 21.04.2025, the DCIT, Central Circle-31, New Delhi forwarded ITAT's order dated 29.01.2025 for further action in this case stating that PAN of the assessee has been transferred to this office. Further, this office vide email dated 23.04.2025, requested the DCIT, Central Circle-31, New Delhi to provide requisite documents required for filing appeal before the Hon'ble ITAT. The DCIT, Central Circle-31, New Delhi provided required documents vide email dated 02.06.2025 to this office. After getting approval from the Pr. CIT-1, Indore on 25.06.2025 received in this office on 01.07.2025, appeal was filed before the Hon'ble ITAT, Indore on 02.07.2025.

7. Further, in this regard, vide letter dated 11.07.2025, this office furnished reply to the Hon'ble ITAT, Indore in response to its email dated 04.07.2025 regarding removal of defect in delayed filing of appeal. Copy of the same is enclosed herewith for kind perusal.

8. Considering the above, it is therefore, requested to please get condoned delay, if any, in filing of appeal before the Hon'ble ITAT, Indore in this case. It is humbly stated that the delay, if any, was only procedural, unintentional and was not abnormal.

Encl. - As above.

Yours faithfully,

3:1




(Padmarabh Tiwari)

Deputy Commissioner of Income Tax-4(1), Indore

Copy to:-

1. Joint Commissioner of Income Tax, Range-4, Indore for kind information.


Deputy Commissioner of Income Tax-4(1), Indore))

3.2 In this regard the Ld. AR of the assessee has submitted that the assessee has no objection on delay aspect. Accordingly we condone the delay. Sufficient cause is shown. There are no malafides. The cause of the delay is bonafidely explained basis bonafide reasons. Appeal admitted & taken up for hearing.

3.3 During the course of hearing thereafter the Ld. AR for the assessee addressed this Tribunal first for which the Ld. DR had no objection.

3.4 The Ld. AR stated that the assessee presently is into the manufacturing of yarn, knitting etc. & has a factory premises in the Khargone District of M.P. It was also stated that the present appeal before this Tribunal is **second round of litigation**. It was submitted that few decades ago the management of the assessee company took a decision to set up yarn, knitting facilities factory at Khargone District of M.P. In order to set up the manufacturing facilities at the aforesaid location, the management of the assessee company also took

decision to bring "**Initial Public Offer**" popularly known as "**IPO**" to finance the proposed project.

The assessee company received an amount of Rs. 1,51,54,534/- as the interest income on the proceeds of Public Issue deposited with the banks, prior to the commencement of commercial production. It was submitted by the Ld. AR that the interest income was parked in [**Fixed Deposit Receipt**] **FDR's**. The aforesaid amount was reduced from the cost of the project. It was stated that in the first round of litigation before ITAT, Indore, this Tribunal has remanded back to the file of the Ld. AO. Our attention was brought to the internal page 2 & 3 of the "**Impugned Order**" especially para 16 [extract of ITAT order] which was read out by the Ld. AR which we reproduce as under :-

" 16. We have considered the rival submissions and the material available on record. It is not in dispute that the assessee received the above interest income from various banks on share application money. The learned Commissioner of Income tax (Appeals) accepted the claim

of the assessee that the said income has been received prior to commercial production of the assessee and that the assessee was under legal compulsion to deposit the share application money in separate bank account. These facts would clearly prove that the assessee as per the Companies Act deposited the share application money with the scheduled bank on which he had no control over the same. The assessee therefore earned the interest incidentally on the same. The decision in the case of Tuticorin Alkali Chemicals (supra) has no applicability to the case because in that case the interest earned on short term deposit out of borrowed funds which were not immediately utilized for setting up of the factory. This decision would not support the findings of the learned Commissioner of Income tax (Appeals). The Hon'ble Supreme Court in the case of Bokaro Steel Limited (supra) and Kamal Co-op. Sugar Mills Limited (supra) held that if interest income is intrinsically linked to set up project before commencement, then it is capital receipt and would reduce the capital investment. It is an admitted

fact that the interest income has been received prior to the date of commercial production. It is also admitted that the assessee was under legal obligation/compulsion to deposit the share application money in the separate bank account and on that account the assessee earned the interest. The authorities below have thus failed to note these important facts while rejecting the claim the assessee. The authorities below have also failed to give the finding of fact whether interest income so earned on share application money had any link with the setting up the project before the commencement. The learned counsel for the assessee while referring to decision of Hon'ble High Court of Madras in the case of VGR Foundation (supra) has referred to the observations of the Hon'ble High Court of Madras in para 5 of the above judgment which distinguished the decision in the case of Tuticorin Alkali Chemica (supra) and also referred too observations of the Hon'ble High Court of Madras to the effect that the share application money, etc. are gathered for being used for setting up of industry, unit, purchase

of assets and so on. It therefore appears from the aforesaid decisions that the assessee has prima facie case for allowing the deduction on this issue. However considering the facts and circumstances of the case and that the authorities below have not given any finding to the effect whether the interest income is intrinsically link to set up project before the commencement of production, we are of the view that the mat requires reconsideration at the level of the Assessing Officer in the light of the decision the Hon'ble Supreme Court in the case of Bokaro Steel Limited (supra) and Kanal Co-Sugar Mills Limited (supra). The contention of the learned Departmental Representative is rejected with regard to bona fide of the claim of the assessee in appending note with return of income because the learned CIT(A) considered this issue on which the revenue not in appeal. It is also very well settled that note given or filed in the return of income part of return of income. If the assessee would not have any justification to claim expenditure, then it would not have appended the note with the return of income.

contention of the learned Departmental Representative is therefore rejected. We therefore set aside the orders of the authorities below and restore this issue to the file of the Assess Officer with the direction to re-decide this issue in the light of the decision of the Hon Supreme Court in the case of Bokaro Steel Limited (supra) and Kamal Co-op. Sugar M Limited (supra) as well as in the light of the decision of the Hon'ble High Court of Man in the case of VGR Foundation (supra). The Assessing Officer shall decide the issue giving reasonable opportunity of being heard to the assessee."

3.3 It was then submitted by the Ld. AR for the assessee by inviting our attention to the **"Impugned Assessment Order"** by virtue of which it was contended that same is not proper & are highted in nature. The **"Impugned Assessment Order"** is contrary to the ITAT order (supra). At this stage a query was raised by this Tribunal to the Ld. AR as to for what various purposes IPO are made by the corporates. The Ld. AR in reply submitted that IPO could be for 1)working capital

requirements 2) For repayment of existing loans 3) For the purpose of expansion of plant and machinery including modernization 4) for running of business 5) other purposes too. In so far as the assessee company was concerned, **the IPO was made for "Setting up of projects"**. The Ld. AR during the course of the hearing also read out relevant extracts like para 3 & 4 of the **"Impugned Assessment Order"**. It was also submitted that in the **"Impugned Assessment Order"** the Ld. AO has not examined the books of the assessee whereas the Ld. CIT(A) in the first appeal has done so.

3.4 The Ld. AR then read out the following from the **"Impugned Assessment Order"**

"1. The company's public issue opened for subscription on 3rd September 1991. The cost of the project was pegged at 3400 Lacs which was mainly on account of land, building, plant & machinery and other fixed assets. The means of finances were to the tune of Rs. 1336 lacs by way of capital from promoters and public, Rs. 509 lacs by way of term loan, Rs. 1545 lacs by way of foreign currency loan and Rs. 10 lacs

by way of subsidy from the state government. The issue was slated for closing on earliest by 6th September 1991 and latest by 14th September 1991. The issue was an unprecedented success and was over subscribed by 75 times. The issue was made at par. Copy of the prospectus is enclosed."

3. Accordingly the company has deposited the proceeds with various banks on which it has earned this interest of Rs. 1,51,54,534/-. All the deposits were realized in Oct & Nov 1991 as evident from the TDS certificates issued by these banks which are already on record. The company commenced part commercial production from 1st February 1992 as evident from the annual accounts note no. 7. Therefore the interest was received before the commencement of commercial production"

"4. At the time of public issue the company was at an advanced stage of construction of its manufacturing

facilities and was in dire need of funds. Had there been no statutory compulsion of the Companies Act, the company would not have kept the funds with banks on a lower rate of interest rather would have immediately deployed the proceeds in the construction activities. Had this been the case, the company would have incurred lower interest cost on its term loans as the term loans would have been utilised from a later date. The details of interest paid on term loans is already available on record as the same was submitted during the initial assessment proceedings. If need be the same can be filed again."

3.5 The Ld. AR finally contended that the nexus is drawn as required. The Ld. CIT(A) impugned order is well merited & reasoned order, in consonance with the order of the ITAT (supra).

3.6 The Ld. DR appearing for & on behalf of the revenue submitted that the revenue has raised in all 8 grounds & read

out each of them as per form No. 36. It was emphasized with regard to ground No. 3 that intent of the deposit is of importance whether before or after the commencement of project. With regards to ground 4, it was submitted that there is an obligation of mandatory nature to deposit the money in the separate bank account. With regard to the ground No. 5, it was contended that the CIT(A) has taken the figures which are partial in the nature & not whole at all.

3.7 The Ld. DR finally stated that **"Impugned Order"** is bad in law & illegal. Revenue has demonstrated this fact & reliance was placed on **"Impugned Assessment Order"**.

3.8 In the rejoinder, the Ld.AR submitted that the ITAT in earlier order(supra) has held in the favor of the assessee & that the **"Impugned Assessment Order"** is contrary to the ITAT order (supra). In further rejoinder stage the DR Stated that it is lawful obligation & statutory duty to keep funds separately in a separate A/C. The issue of prior to commissioning of plant was considered by the ITAT. The Hearing was then concluded.

4. **Observations Findings & conclusions**

4.1 We have to decide the legality, validity and propriety of the **“impugned order”** basis records of the case & the rival submission canvassed before us.

4.2 We have carefully perused the records of the case and have heard the submissions.

4.3 We basis records of the case & after hearing & upon examining the rival contentions of the Ld. AR & the Ld. DR canvassed before us, are of the considered view that in the **“Impugned Assessment Order”** dated 31.12.2009 , the Ld. AO has held as under in the ultimate analysis:-

1. The assessee has earned interest on proceeds of Public Issue deposit which is not in dispute.
2. That the fact that the said interest has been received prior to the commencement of commercial production does not change the nature of income.
3. There is no cost associated with the income.

4. The said income [interest income] cannot be said to be directly related to setting up of the Project.
5. Every Public issue is made to set up some projects. Therefore simply for the reasons that the Public issue was made to set up the Project will not help the assessee.
6. The fact that the proceeds were required to be kept in separate bank account by the provisions of Companies Act, will also not, in any manner **alter the nature of income**.
7. The fact remains that the interest received is income for all practical purposes.
8. The interest income has no connection whatsoever, with the setting up of the project & cannot be allowed to be adjusted against the cost of fixed assets.
9. That the interest of Rs. 1,51,54,534/- is income from other sources & same is taxed accordingly.

4.4 The Ld. CIT(A) in the “**Impugned order**” dated 22.07.2022 has allowed the first appeal of the assessee & has observed & held as under in the ultimate analysis:-

1. The ITAT had remanded the case for the limited purpose of verification as to whether the fresh share capital was linked to the setting up of the Project and if so, was directed to give benefit of capitalizing the interest amount, thereby reducing the cost of assets.
2. Instead of giving a reasoned finding regarding linkage or otherwise of interest income with setting up of the Project, the AO has simply denied the said linkage without giving any reasons & also remarking in the process that simply for the reason that the Public issue was made to set up the Project, will not help the assessee since every public issue is made to set up some projects. The Ld. CIT(A) has further held that this above observation is in **direct conflict** with the directions of Hon’ble ITAT which had clearly stated that if the **Proceeds** of the Public Issue **are linked to** setting

up of the **Project**, the AO should allow capitalization of the **interest earned on such Proceeds**.

3. The Ld. CIT(A) in the "**impugned order**" has also observed and held that the Ld. AO **has failed** to examine the issue of linkage as per the directions of ITAT which required examination of the issue in the light of the judgements of Hon'ble Supreme Court of India in case of Bokaro steel Ltd.[1998(12) TMI-4-SC] & Karnal Co-op. sugar Mills Ltd. [(2000) 243 ITR 2(SC)].
4. The Ld. CIT(A) in the "**impugned order**" notwithstanding aforesaid examined the aforesaid issue of linkage between aforesaid interest income [earned out of Proceeds of IPO] with the setting up of the Project.
5. The Ld.CIT(A) in this regard of linkage did & carried out a comparative analysis of the audited Financial Statements of F.Y. 1990-91 & 1991-92 and observed that following position emerges with regard to the increases in the share capital, term loans and gross value of fixed assets which is reproduced by us as below:-

"Fund utilised for setting up the Project as on

31/03/1992

Amount in '000

Particulars	31.03.1992	31.03.1991	Increase
	A	B	C(A-B)
Gross value of fixed assets*	3,90,736	2,993	3,87,743
Capital Work in progress*	11, 754	24,604	-12,850
Add: Interest income earned on IPO Proceeds which was reduced from the value of fixed assets	15154.534	0	15,155
Total outflow on acquisition of fixed assets	4,17,645	27,597	3,90,048
Term loans for acquisition of fixed assets #	2,63,684	22,950	2,40,734
Share capital (net of calls in arrears) \$	1,53,151	18,468	1,34,683
Total inflow for meeting cost of fixed assets	4,16,835	41,418	3,75,417
Excess amount utilized for acquisition of fixed assets from internal accruals	810	-13,821	14,631

6. After tabulating the aforesaid the Ld. CIT(A) has observed & held that during the year under consideration there was an increase in the share capital to the extent of Rs. 13,46,83,000/- due to the Proceeds of the IPO, which were temporarily placed in a separate Bank account as mandated under the Companies Act. Further, there was an increase of term loans of Rs. 24,07,34,000/- [for acquisition of fixed assets] specially

taken for **acquisition of fixed assets** as emerging from the **relevant schedules** to the **statement of Accounts** [supra table]

7. The Ld. CIT(A) in regard to the relevant schedules to the Statement of Accounts has also done comparison between years ended as 31/3/91 & 31/3/92 which is reproduced by us as below :

Schedules to statement of accounts

	As at 31.3.1992	As at 31.3.1991
	Rs. In 000's	Rs. In 000's
1. Share Capital		
Authorised		
200,00,000 Equity shares at Rs. 10 each	<u>2,00,000</u>	<u>1,50,000</u>
Issued, Subscribed & Paid up		
153,64,000 Equity shares at Rs. 10 each	1,53,640	1
	<u>489</u>	<u>-</u>
Less: Calls in arrear	1,53,151	1
Share application money pending allotment	<u>-</u>	<u>18,467</u>
	<u>1,53,151</u>	<u>18,468</u>
2. Reserve and Surplus		
Surplus as per Profit & Loss Account	<u>5,116</u>	<u>-</u>
	<u>5,116</u>	<u>-</u>
3. Secured Loans		
From Financial Institutions		
Ruppee Term Loans	78950	22,950
Foreign Currency Loans (Ruppee-tied)	1,84,734	-
From Banks		
For working Capital	<u>69,053</u>	<u>-</u>
	<u>3,32,737</u>	<u>22,950</u>

8. The Ld. CIT(A) in the **"Impugned Order"** after making detailed analysis as tabulated in above two tables (Supra) came to the conclusion in the final analysis of thing i.e. linkage between interest income [IPO] & setting up of the Plants & has observed & concluded that the total inflow from increase in share capital and dedicated term loans was Rs. 37,54,17,000/- and as again this, the gross value of the fixed assets has increased from Rs. 29,93,000/- in the F.Y. 1990-91 to Rs. 39,07,36,000/- in the F.Y. 1991-92 resulting in the **increase of Rs. 38,77,43,000/-**, which when adjusted for the Capital Work in Progress & **Interest earned from IPO Proceeds**, gives the resultant figure of **Rs. 39,00,48,000/-** on account of total out flow on acquisition of fixed assets.
9. In this manner, the Ld. CIT(A) has held that the total in flow of Rs. 37,54,17,000/- approximately matches the total outflow o Rs. 39,00,48,000/-on the account of acquisition of fixed Assets, giving small excess amount of Rs.1,46, 31,000/- utilised for acquisition of fixed assets from internal accruals.

10. The Ld. CIT(A) thereafter has held that the entire increase in share capital of Rs. 13,46,83,000/- during the year under consideration has been completely utilised towards the acquisition of fixed assets & therefore it is crystal clear that the **IPO Proceeds are inextricably linked to the setting up of the Plant.**
11. The Ld. CIT(A) after analysing the above factual backdrop the exercise of which ought to have been done by Ld. AO in view of the Order of ITAT, Indore (Supra) himself did the said exercise having no option & finally concluded that the IPO Proceeds are inextricably linked to the setting up of the Plant.
12. The interest income earned from temporary parking of IPO fund was allowed to be set off from the Capital Cost of Project which is in accordance with the directions of the ITAT Indore Bench order(supra).
- 4.5 The core argument of the Ld. DR in the final analysis during the course of hearing was nothing but placing reliance on the **"Impugned Assessment Order"** of the Ld. AO which according to us assailed by the Ld. CIT (A) has been done

reasonably. The Ld.AO was directed to do the linkage between Interest income (IPO) with setting up of Project as per ITAT order of Indore Bench(supra) which analysis he did not do so despite the order of higher Authority body like ITAT. The Ld. CIT(A) did elaborate exercise basis financial statements of both the years studied the financial statements did necessary calculations & has come to a well reasoned & merited finding as analyzed by us aforesaid. The Ld. DR has failed to demolish & tarnish the analysis done by Ld. CIT(A) on any cogent & tangible grounds. No material is placed on record of this Tribunal to dint the analysis of the Ld. CIT(A). The arguments of Ld. DR as recorded by us Para 3.6 (supra) are not enough weapons to dint the findings of the Ld. CIT(A) which is done basis a proper financial analysis that too basis material available on record. Entire gamut of the case is examined & contentions of the Ld. DR are all rejected as they do not have sufficient strength to dislodge the findings made by the Ld. CIT(A). The Ld. AR has rightly asserted that core finding on the issue was already examined by the ITAT, Indore Bench earlier & matter was remitted back to the Ld. AO to establish linkage between interest income (IPO) vis-a-viz setting up of

projects as & by way of verification only which too was not done so by the Ld. AO & ultimately was done by the CIT(A) in the **“Impugned Order”** . The Ld. AR has rightly stated in the hearing as recorded by us in para 3.8 that earlier order of ITAT, Indore was in favour of the assessee & that the **“Impugned Assessment Order”** is contrary to earlier order of ITAT, Indore Bench & hence revenue appeal should be rejected. We concur with the submission made by the Ld. AR on this case.

4.6 In view of above premises drawn by us, we upheld the **“Impugned Order”** & dismiss the revenue’s appeal.

5

Order

5.1 In the result, the **“Impugned Order”** is set aside & the revenue’s appeal is dismissed.

Pronounced in open court on 27.02.2026.

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

Dated : 27/02/2026

SN

Copies to:

- (1) The appellant
- (2) The respondent
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore