

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "ए" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JM AND SHRI RAJESH KUMAR, AM**

आयकर अपील सं./ I.T.A. No.3191/Mum/2013  
(निर्धारण वर्ष / Assessment Year :2009-10)

Income Tax Officer 6(1)-2, Room No.503, Aayakar Bhavan, M K Road, Mumbai-400020	<u>बनाम/</u> Vs.	M/s Alliance Hospitality Services Pvt Ltd., 462, Phoenix Mill Premises, Senapati Bapat Marg, Lower Parel, Mumbai-400013
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Appellant	Respondent
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**PAN: AAGCA2687Q**

अपीलार्थी की ओर से / Appellant by	:	Shri Rajesh Kumar Yadav
प्रत्यर्थी की ओर से/Respondent by	:	Shri Vijay Mehta

सुनवाई की तारीख /Date of Hearing	:	11.8.2017
घोषणा की तारीख /Date of Pronouncement	:	22.8.2017

**आदेश / ORDER**

**PER RAJESH KUMAR, A. M:**

This is an appeal filed by the revenue challenging the order of Id. CIT(A)-14, Mumbai, dated 15.1.2013, pertains to the assessment year 2009-10.

2. Grounds of appeal taken by the assessee revenue are as under :

"1. On the facts and circumstances of case and the law, the Ld. CIT(A) erred in deleting the addition for interest earned from the fixed

*deposit of share application money before commencement of business".*

*"On the facts and circumstances of case and the law, the Ld. CIT(A) erred in allowing relief to the assessee, by failing to follow the ratio of Apex Court laid in the decision of Tuticorin Alkali Chemicals & Fertilizers Ltd. which was preferred by the Apex Court in preference to its decision in Bokaro Steel in its later decision of Bongaigon Refinery & Petrochemicals Ltd."*

*3. "On the facts and circumstances of case and the law, the Ld. CIT(A) erred in giving relief to the assessee by relying upon decision of VGR Foundation of Chennai High Court which followed Bokaro Steel when the Ld CIT(A) ought to have followed the Apex Court decision of Tuticorin Alkali Chemicals which was followed in Bongaigon Refinery and also decision of Mumbai Tribunal in Whsitting Woods international Ltd."*

*4. "On the facts and circumstances of case and in law, the Ld. CIT(A) erred in deleting the disallowance u/s 14A of the Act, on the wrong assumption that no revenue expenditure has been claimed for the expenditure, as CIT(A) failed to appreciate that amount not disallowed and capitalized would result in deduction albeit on gradual basis in the form of depreciation in the following years when the business commences".*

*5. "On the facts and circumstances of case the Ld. CIT(A) erred in deleting the disallowance u/s 14A of the Act, failing to appreciate that this disallowance u/s 14A is required to be made by the A.O. (and it is not optional on the part of the A.O.) r if the assessee had earned exempt income , incurred expenditure for earning it and has not made sufficient disallowance of its own u/s 14A of the Act."*

*6. "On the facts and circumstances of case the Ld. CIT(A) erred in deleting the disallowance u/s 14A of the Act. failing to appreciate that disallowance made by the A.O. was not excessive (@0.5%of the average value of investment)and was as per Rule 80 of the I.T. Rules.)"*

The issue raised in the grounds of appeal no.1 to 3 is against the deletion of addition of interest earned from the fixed deposit out of share application

money by the Id.CIT(A) as made by the AO under the head the income from other sources by following ratio of Apex Court laid in the decision of Tuticorin Alkali Chemicals & Fertilizers Ltd whereas the Id.CIT(A) relied on the decision in the case of VGR Foundation of Chennai High Court which followed the decision in Bokaro Steel.

3. The brief facts of the case are that the assessee filed return of income on 29.9.2009 declaring an income of Rs.4,39,504/-. The assessee is a private limited company engaged in hotel construction and hospitality services and total Work-in-Progress as on 31.3.2009 was Rs.38,08,01,798/-. During the year the assessee earned interest on fixed deposit to the tune of Rs.94,07,568/- on fixed deposits comprising of Rs.34,40,144/- from Corporation Bank and Rs.59,67,424/- from Kotak Mahindra Bank. The said FDR were purchased out of the share application money received by the assessee for the construction of hotel. The assessee upon realization that the funds were not required in the present and near future , the same were put in the fixed deposits. The said interest income from FDRs was reduced and adjusted against the capital work in progress as on 31.3.2009. The assessee has claimed refund on TDS on interest income on FDRs to the extent of Rs.16,19,059/- in the return of income. Accordingly, the AO issued show cause notice to the assessee as to why interest of Rs.94,07,568/- received should not be brought to tax under the head

"income from other sources", which the assessee replied vide letter dated 29.9.2011 which has been reproduced by the AO in the assessment order in para 5. The AO after considering and rejecting the submissions of the assessee assessed the same as income from other sources by following the decision in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd V/s CIT 227ITR172(SC). Aggrieved by the order of AO, the assessee preferred an appeal before the Id.CIT(A), who allowed the appeal of the assessee by observing and holding as under :

*"3.11 I have considered the facts of the case, the written submissions of the appellant as well as the order of the AO on this issue. As stated above, the appellant company is engaged in the business of hotel construction and hospitality services. At present, the appellant is developing a hotel project at Pune which has not started functioning yet. Hence, all the expenses incurred were capitalized as capital-work-in-progress and the appellant has not claimed any expenditure during the year. As on 31.03.2009 the total capital work in progress is Rs.38,08,01,798/-. The appellant received share application money of Rs.45, 13,60,000/- and Rs.18,60,00,000/- on 12.12.2008 and 16.12.2008 from Fulda River Ltd. and from K2A Hospitality respectively. Out of this receipt of share application money, the appellant kept fixed deposits of RS.25 crores and RS.15,00,15,000/- on 22.12.2008 with M/s. Kotak Mahindra Bank Ltd. and M/s. Corporation Bank Ltd. temporarily, as the funds to that extent were not immediately required. The deposits earned a total interest of RS.94,07,568/-. The said interest was reduced from the capital-work-in-progress.*

*3.12 The AO, while relying on the Supreme Court decision in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra) has taxed the receipt of interest of Rs.94,07,568/- as income from other sources. The appellant, on the other hand has relied on the decision of Hon'ble Chennai High Court in the case of CIT v. VGR Foundations (supra). The appellant contends that the interest earned on the fixed deposits made*

*out of its own money is not taxable as income from other sources as it is a capital receipt; hence, accordingly, it has been reduced from CWIP.*

*3.13 I notice that the Hon'ble Chennai High court rendered the above decision relying on the judgment of Hon'ble Supreme Court in the case of Bokaro Steel Ltd. and Karnataka Power Corporation. I have perused the decision of Chennai High Court in the case of CIT v. VGR Foundation carefully. The Hon'ble Chennai High Court, in the said decision has distinguished the facts in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. with those in the case of VGR Foundation. The Hon'ble Chennai High Court came to the conclusion that in the event, the interest is earned from out of deposits made from borrowed funds, then it would be in the nature of income. However, if it is from own funds, then the same will not be true. 'Share application monies' do not fall into the category of borrowed funds and do not involve payment of interest. Instead, the 'Share application monies' are in the nature of own funds of a company. The Hon'ble Chennai High Court has followed the decisions in the case of Bokaro Steel Ltd., Karnal Co-op Sugar Mills Ltd. and Karnataka Power Corporation. Hence, looking to these judgments which are direct on the issue and squarely applicable to the appellant's case, I am of the considered opinion that interest income received on the fixed deposits generated through the money received by way of share application is not taxable as income from other sources. The facts in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. are distinguishable from the facts of the case of the appellant. Hence, the claim of the appellant to reduce the interest receipt from capital work in progress is reasonable, legally correct and therefore, acceptable".*

*3.14 With regard to the AOs contentions that the fixed deposits have been generated out of borrowed funds of Rs.16,49,19,599/-, I find that the same is not correct. The appellant has sufficiently established that the borrowed funds have been received subsequent to the date of taking fixed deposits and receipt of share application money. Hence it is evident that the addition of Rs.94,07,568/- is not sustainable. Accordingly, the same is hereby is deleted."*

4. The Id. DR relied on the order of AO by submitting before the bench that the AO has rightly brought to tax the interest on FDRs as income by relying on the decision of Tuticorin Alkali Chemicals and Fertilizers Ltd V/s CIT (supra) and therefore the order of CIT(A) deserved to be reversed.

5. The Id. AR vehemently submitted before us that the assessee has rightly reduced the interest on fixed deposits which were sourced out of share application money received by the assessee for the purpose of its project. The said money was put in fixed deposits in Corporation Bank and Kotak Mahindra Bank on commercial expediency and prudent business considerations when the said funds were not required immediately in the construction activity. The Id. AR in defense of his argument relied upon the number of decision as under :

- i) DCIT V/s VGR Foundations (298 ITR 132);(MAD)
- ii) Indian Oil Panipat Power Corporation V/s ITO (315 ITR 255)(Del);
- iii) M/s Island Star Mall Developers P.Ltd V/s ACIT ITA No.5078/Mum/2014(Mum.Trib)(AY-2010-11) dated31.7.2015
- iv) M/s Kaygee Lopares India Pvt Ltd V/s ACIT in ITA No.7745 and 7745/Mum/2012(AY-2008-09 & 2009-10) dt.28.10.2015

6. The Id. AR argued that the since the said fixed deposits which yielded interest income were made out of the share application money which own money of the company and not borrowed funds by the assessee and

therefore, the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. was not applicable at all as it is distinguishable on facts. Whereas, the case of the assessee was directly covered by the above cited decisions and therefore the issue decided by the Id.CIT(A) is a reasoned decision and as per the ratio laid down by the above stated decisions and therefore the same should be upheld.

7. We have carefully considered the rival contentions and perused the material placed before us including the decisions relied upon by Id.AR. The undisputed facts of the case are that the funds were raised by way of share application money by the assessee and when the same were not required immediately in the construction activity, the money was put into the Corporation Bank and Kotak Mahindra Bank in short term deposits which yielded an interest of Rs.34,40,144/- and Rs.59,67,424/- respectively. The said interest of Rs.94,07,568/- was reduced from the capital work in progress as on 31.3.2009 and thus capitalized on the ground that the interest was received out of own money and not out of the borrowed funds. The Id. CIT(A) after following the ratio laid down in the case of DCIT V/s VGR Foundations (298 ITR 132);(MAD) and also after following the decisions in the cases of Bokaro Steel Ltd., Karnal Co-op Sugar Mills Ltd. and Karnataka Power Corporation decided the issue in favour of the assessee. Whereas in the case of the assessee the decision in the case of Tuticorin Alkali Chemicals

and Fertilizers Ltd the facts were distinguishable and therefore not applicable to the present case. We find that the facts of the present case are squarely covered by the decisions referred above and relied upon by the Id.AR, and therefore, we do not find any infirmity in the decision of the Id.CIT(A) and accordingly, we uphold the same by dismissing the grounds of appeal no.1 to 3. Ground no.1 to 3 are dismissed.

8. The issue raised in grounds of appeal no.4 to 6 is relating to deletion of disallowance by Id.CIT(A) of Rs.7,14,404/- as made by the AO u/s 14A of the Act.

9. The facts of the case are that the assessee received an exempt income of dividend to the tune of Rs.87,81,275/- which was reduced from capital work in progress as on 31.3.2009 and the AO after applying the provisions of section 14A r.w.r.8D(2)(iii) disallowed Rs.7,14,404/- and added the same to the total income of the assessee. In the appellant proceedings, the Id. CIT(A) deleted the disallowance by observing and holding as under :

*"4.8 I have considered the facts of the case, the written submissions of the appellant as well as the order of the A.O. on this issue. The appellant is developing a hotel project at Pune. The appellant has capitalized all the expenditure in respect of the project and the same has been shown as capital work in progress. During the year the appellant has received dividend of Rs.87,81,275/- on its investment in mutual funds The receipt of the said dividend has been reduced from work in progress. No exemption in respect of receipt of dividend has been claimed by the appellant. Also, no expenditure has at all been claimed by the appellant as all the expenditure has been capitalized . Under these given facts, when no expenditure has at all been claimed,*

*nothing could be disallowed. Hence, the question of disallowance by invoking the provisions of section 14A r.w.r.8D cannot arise. The appellant has neither claimed any expenditure nor claim any exempt income during the period under consideration. Thus, logically as well as legally, I am of the considered view that no disallowance of expenditure by invoking section 14A r.w.r. 8D is warranted in the appellant's case. Accordingly, the disallowance of Rs.7,14,404/- is deleted"*

10. We have heard the rival contentions and perused the material on the issue including the orders of authorities below. We find that there is question of disallowance by application of provisions of section 14A r.w.r 8D as the assessee has not claimed any expenditure as the entire expenditure has been capitalized under the head work in progress. We are in agreement with the conclusion drawn by the Id.CIT(A) that the assessee has neither claimed any exempt income as the same was reduced from the capital work in progress and all the expenses were capitalized in the capital work in progress thereby not claiming any expenses out of taxable income and accordingly uphold the same by dismissing the ground taken by the revenue.

11. In the result, the appeal of the revenue stands dismissed.

12. Order pronounced in the open court on 22nd Aug, 2017

Sd

**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22.8.2017  
SRL,Sr.PS

sd

**( RAJESH KUMAR )**  
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai