

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. Nos. 183 & 184/KOL/ 2016
Assessment Years: 2010-2011 & 2011-2012**

**Income Tax Officer,.....Appellant
Ward-2(2),Koilkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**

-Vs.-

**M/s. City Mall Vikash (P) Limited,.....Respondent
36, Ganesh Chandra Avenue,
Kolkata-700 013
[PAN: AADCC 2523 J]**

Appearances by:

*Shri Saurabh Kumar, Addl. CIT, D.R., for the Department
Shri M. Satnaliwala, FCA, for the assessee*

Date of concluding the hearing : October 09, 2017

Date of pronouncing the order : October 25, 2017

O R D E R

Per Shri P.M. Jagtap, A.M.:

These two appeals are preferred by the Revenue against two separate orders passed by the Id. Commissioner of Income Tax (Appeals)-1, Kolkata, both dated 31.12.2015 for assessment years 2010-11 & 2011-12 and since the issue involved therein is common, the same have been heard together and are being disposed of by a single consolidated order for the sake of convenience.

2. The grounds raised by the Revenue in these appeals, which are identical except the amount in dispute, read as under:-

“(1) On the facts and circumstances of the case and in law, Id. CIT(A) has erred in allowing set off of the interest income of Rs.1,57,93,739/- (for A.Y. 2010-11) and Rs.1,05,16,357/- (for A.Y. 2011-12) from the project cost as development expenditure account.

(2) On the facts and circumstances of the case and in law, Id. CIT(A) has erred in deleting the interest income which is taxable, under income from other source as held "The amount of interest received by the company flows from its investments and is its income and is clearly taxable even though the interest amount is earned by utilizing borrowed capital" in the judgment of Tuticorin Alkali Chemicals -vs.- CIT (1997) 141 CTR (SC) 387".

3. The assessee in the present case is a Company. It had obtained huge Term Loan from Allahabad Bank for construction of a Mall-cum-Shopping Complex. During the years under consideration, a portion of the said loan was invested by the assessee for earning interest and after adjusting the interest so earned against the amount of interest paid to Allahabad Bank on the Term Loan, the net interest paid was transferred to capital work-in-progress. According to the Assessing Officer, the interest income earned by the assessee on the investment made out of loan taken from Allahabad Bank was a revenue income chargeable to tax in the hands of the assessee under the head "income from other sources" for both the years under consideration as held by the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizer Limited -vs.- CIT [141 CTR 387]. He, therefore, required the assessee to offer its explanation in the matter. In reply, reliance was placed by the assessee on the decisions of the Hon'ble Supreme Court in the case of CIT -v.- Karnal Cooperative Sugar Mills Limited [243 ITR 2] and in the case of CIT -vs.- Bokaro Steel Limited [236 ITR 315] to contend that the expenses incurred on account of interest paid to Allahabad Bank on loan for earning the interest income on investment in question was allowable as deduction under section 57(iii) of the Act and, therefore, there was no question of making addition on account of such interest income under the head "income from other sources". This contention of the assessee was not found acceptable by the Assessing Officer and he proceeded to bring to tax the interest income earned by the assessee in both the years under consideration in the hands of the assessee under the head "income from other sources".

4. The addition made by the Assessing Officer on account of interest income under the head "income from other sources" in both the years under consideration was challenged by the assessee and after considering the submissions made by the assessee, the facts of the case and the case laws relied upon, the Id. CIT(Appeals) deleted the addition made by the Assessing Officer on account of interest income in both the years under consideration for the following reasons given in his impugned order, which are identical in both the years under consideration except the amounts:-

A.Y. 2010-11

"I have gone through the A.Os finding, documents on record and written submissions and case laws cited by the appellant. It was found from perusal of documents that during the relevant assessment year 2010-11 under consideration that the appellant company had paid interest to Allahabad Bank of Rs.2,81,40,502/- after adjusting interest income of Rs.1,57,93,739/-, the balance of Rs.1,22,76,516/- was debited to project development expenditure account, which was included in total work-in-progress in the Balance Sheet. The AO has brought to tax entire interest income of Rs.1,57,93,739/- as income from other Sources by applying ratio of judgment in case of Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT in 141 CTR 387(SC).

The appellant has relied upon the ratio of the two Judgements of Hon'ble Supreme Court in the case CIT vs. Bokaro Steer Ltd. 236 TTR 315(SC) and CTT vs.-Kamal Co-operative Sugar Mills Ltd. 243 ITR 2(SC). While deciding the issue on taxability of interest: income on short term bank deposits in the case of Bokaro Steel Ltd. 236 ITR 315(SC)(Supra), the Hon'ble Supreme Court has considered and distinguishes its earlier judgement !1 the case of Tuticron Alkali Chemicals & Fertilizers Ltd.. vs. CIT in 141 CTR 387(SC) which was relied upon by the A.O The Hon'ble Supreme Court has observed in para-7 of the said judgement that "The company may also, as in that case, keep the surplus funds in short term deposits in order to earn interest. Such interest will be chargeable under section 56 of the Act. This court also emphasized the fact that the company was not bound to utilise the interest so earned to adjust it against the interest paid on borrowed capital. The company was free to use this income in any manner it liked. However, while interest earned t)y investing borrowed capita! in short term deposits is an independent source of income not concerned with the construction activities or business

activities of the assessee, the same cannot be said in the present case where the utilization of various assets of the company and the payments received for such utilization are directly linked with the activity of setting up the steel plant of the assessee. These receipts are inextricably linked with the setting up of the capital structure of the assessee company. They must, therefore, be viewed as capital receipts going to reduce the cost of construction".

On careful consideration of the totality of the facts and circumstances of the appellant's case, the facts of the appellant's are found to be covered by issue of the decision of the of Hon'ble Apex Court in the case of CIT v Karnal Co-operative Sugar Mills Ltd 243 ITR 2(SC) and the decision of the Hon'ble Supreme court in CIT v. Bokaro Steel Ld.(1999) 236 ITR 315(SC). Therefore, the interest income amounting to Rs. Rs.1,57,93,739/- on bank and other deposits during the pre-operative period are held to be in the nature of capital receipts. The addition made by the A.O. to the appellant's returned income is directed to be deleted. Grounds No. 2 to 3 are treated as allowed".

A.Y. : 2011-12

"I have gone through the A.Os finding, documents on record and written submissions and case laws cited by the appellant. It was found from perusal of documents that during the relevant assessment year 2011-12 under consideration that the appellant company had paid interest to Allahabad Bank of Rs.6,41,19,141/- after adjusting interest income of Rs.1,05,16,357/-, the balance of Rs.5,40,34,747/- was debited to project development expenditure account, which was Included in total work-in-progress in the Balance Sheet. The AO has brought to tax entire interest income of Rs.1,05,16,357/- as income from other Sources by applying ratio of judgment in case of Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT in 141 CTR 387(SC).

The appellant has relied upon the ratio of the two Judgements of Hen'ble Supreme Court in the case CIT vs. Bokaro Steer Ltd. 236 TTR 315(SC) and CTT vs.-Kamal Co-operative Suqar Mills Ltd. 243 ITR 2(SC). While deciding the issue on taxability of interest: income on short term bank deposits in the case of Bokaro Steel Ltd. 236 ITR 315(SC)(Supra), the Hon'ble Supreme Court has considered and distinguishes its earlier judgement !1 the case of Tuticron Alkali Chemicals & Fertilizers Ltd.. vs. CIT in 141 CTR 387(SC) which was relied upon by the A.O The Hon'ble Supreme Court has observed in para-7 of the said judgement that "The company may also, as

in that case, keep the surplus funds in short term deposits in order to earn interest. Such interest will be chargeable under section 56 of the Act. This court also emphasized the fact that the company was not bound to utilise the interest so earned to adjust it against the interest paid on borrowed capital. The company was free to use this income in any manner it liked. However, while interest earned by investing borrowed capital in short term deposits is an independent source of income not concerned with the construction activities or business activities of the assessee, the same cannot be said in the present case where the utilization of various assets of the company and the payments received for such utilization are directly linked with the activity of setting up the steel plant of the assessee. These receipts are inextricably linked with the setting up of the capital structure of the assessee company. They must, therefore, be viewed as capital receipts going to reduce the cost of construction".

On careful consideration of the totality of the facts and circumstances of the appellant's case, the facts of the appellant's are found to be covered by issue of the decision of the of Hon'ble Apex Court in the case of CIT v Karnal Co-operative Sugar Mills Ltd 243 ITR 2(SC) and the decision of the Hon'ble Supreme court in CIT v. Bokaro Steel Ld.(1999) 236 ITR 31S(SC). Therefore, the interest income amounting to Rs. Rs.1,05,16,357/- on bank and other deposits during the pre-operative period are held to be in the nature of capital receipts. The addition made by the A.O. to the appellant's returned income is directed to be deleted. Grounds No. 2 to 3 are treated as allowed".

5. Aggrieved by the orders of the Id. CIT(Appeals), the Revenue has preferred these appeals before the Tribunal.

6. We have heard the arguments of both the sides and also perused the relevant material available on record. Although the Id. D.R. has relied on the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizer Limited (supra) in support of the Revenue's case on the issue under consideration, we find that this issue is squarely covered in favour of the assessee by the decisions of the Hon'ble Supreme Court in the cases of Bokaro Steel Limited (supra) and Karnal Cooperative Sugar Mills Limited (supra) as rightly held by the Id. CIT(Appeals). The

relevant facts involved in the case of the assessee clearly show that the investment out of funds borrowed from Bank was temporarily made by the assessee to reduce the interest cost and since such utilization was directly linked with the activity of construction of Mall-cum-Shopping Complex, which formed the capital structure of the assessee-company, the interest earned on investment was viewed as capital receipts, which was going to reduce the cost of construction. Even otherwise, if the said interest income was to be held as liable to tax in the hands of the assessee under the head "income from other sources", the assessee was entitled for deduction on account of interest paid to Allahabad Bank on the borrowed funds under section 57(iii) as held by the Hon'ble Supreme Court in the case of Karnal Cooperative Sugar Mills Limited (supra) and such interest payment being more than the interest earned in both the years under consideration, no addition was liable to be made to the total income of the assessee on this issue. We, therefore, find no infirmity in the order of the Id. CIT(Appeals) giving relief to the assessee on this issue for both the years under consideration and upholding the same, we dismiss both these appeals filed by the Revenue.

7. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on October 25, 2017.

Sd/-
(S.S. Viswanethra Ravi)
Judicial Member

Sd/-
(P.M. Jagtap)
Accountant Member

Kolkata, the 25th day of October, 2017

Copies to : (1) ***Income Tax Officer,***
Ward-2(2), Koilkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069

(2) ***M/s. City Mall Vikash (P) Limited,***
36, Ganesh Chandra Avenue,
Kolkata-700 013

- (3) Commissioner of Income Tax (Appeals)-1, Kolkata;*
- (4) Commissioner of Income Tax ,Kolkata*
- (5) The Departmental Representative*
- (6) Guard File*

By order

*Senior Private Secretary,
Head of Office/DDO
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.