IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Income Tax Appeal No. 36 of 2007

(1) The Commissioner of Income Tax, Dehradun
(2) Dy. Commissioner Income Tax Circle Haridwar

.....Appellants

Versus

Tehri Hydro Development Corporation,
Bhagirathi Puram, Tehri

.....Respondent

Along with

Income Tax Appeal No. 84 of 2007

(1) Commissioner Income Tax, Dehradun
(2) Assistant Commissioner of Income Tax,
Circle-I, Dehradun

.....Appellants

Versus

M/s Tehri Hydro Development Corporation,
Bhagirathi Puram, Haridwar

.....Respondent

&

Income Tax Appeal No. 85 of 2007

(1) Commissioner Income Tax, Dehradun
(2) Assistant Commissioner of Income Tax,
Circle-I, Dehradun

.....Appellants

Versus

M/s Tehri Hydro Development Corporation,
Bhagirathi Puram, Haridwar

.....Respondent

Sri Arvind Vashistha, Advocate, present for the appellants.
Sri Pulak Raj Mullick, Advocate, present for respondent / assessee.

Hon'ble Prafulla C. Pant, J.
Hon'ble B.S. Verma, J.

(Oral-Hon'ble Prafulla C. Pant, J.)

All these three appeals involve same questions of law, as such taken up together and are being disposed of by this common judgment. I.T.A. No. 36 of 2007, is directed against the order dated 7th April 2006, passed by Income Tax Appellate Tribunal (for short I.T.A.T.), Delhi Bench 'A', New Delhi, in I.T.A. No. 4346/Del/2002 (Assessment Year 2000-2001). I.T.A. No. 84 of 2007, is directed against the order dated 30th November 2006, passed by I.T.A.T., Delhi Bench 'F', New Delhi, in I.T.A. No. 2685/Del/2003 (Assessment Year 2001-2002). And, I.T.A. No. 85 of 2007, is directed against the order dated 30th November 2006, passed by I.T.A.T., Delhi Bench 'F', New Delhi, in I.T.A. No. 3369/Del/2003 (Assessment Year 2001-2002).

(2) The common questions of law involved in these three appeals are as under:-

(i) Whether I.T.A.T. has erred in law in deleting addition of 2.5% on income earned by way of interest by the respondent / assessee Tehri Hydro Development Corporation (for short T.H.D.C.), claimed by it as deduction under Section 57(iii) of the Income Tax Act, 1961?

(ii) Whether Commissioner of Income Tax (Appeals) [for short C.I.T. (A)] and I.T.A.T. have erred in law in accepting the rent and interest received from its employees and oustees in Dam area as capital receipts and thereby excluding the same from taxability?

(3) Heard learned counsel for the parties.

(4) Brief facts giving rise to these appeals are that assessee / company is a public sector undertaking of Government of India, which is engaged in construction of Hydro Electric Project for generation of power and irrigation. Returns

were submitted by it for the relevant years declaring its total income and simultaneously claiming deductions on the interest on deposits with the Banks, interest received on rent from its employees and oustees in Dam area (for construction of their houses for rehabilitation). The Assessing Officer (hereinafter referred as A.O.) issued notices under Section 143(2) of Income Tax Act, 1961 (for short the Act). After hearing them, the A.O. disallowed the deduction claimed on amount of interest on deposits with the Bank and also disallowed the claim of deduction on interest received on the amounts deposited by employees of assessee and oustees in Dam area and also on the rent received from the employees. Aggrieved by the orders passed by A.O., the respondent / assessee preferred appeals before C.I.T. (A). C.I.T. (A) passed its order dated 13.09.2002, in Appeal No. 231/HRD/2002-03, which relates to present I.T.A. No. 36 of 2007. C.I.T. (A) passed its order 17.02.2003, in Appeal No. 95/HRD/2002-03, which relates to present I.T.A. No. 84 of 2007 and I.T.A. No. 85 of 2007. Said authority after hearing the parties allowed the deductions claimed by the respondent / assessee. Aggrieved by said order, revenue preferred I.T.A. No. 4346/Del/2002 before I.T.A.T.. Revenue filed

I.T.A. No. 3369/Del/2003 against the order dated 17.02.2003, passed by C.I.T. (A) and assessee also filed cross I.T.A. No. 2685/Del/2003 before I.T.A.T. for increase in the percentage of deduction on expenditure. The I.T.A.T. dismissed the appeal No. 4346/Del/2002 of revenue and affirmed the order dated 13.09.2002, passed by C.I.T. (A), in Appeal No. 231/HRD/2002-03. Appeal of revenue (No. 3369/Del/2003) before I.T.A.T. was also dismissed, but the appeal of respondent / assessee (No. 2685/Del/2003) was allowed permitting deductions on Administrative expenditure to the extent of 2.5% on interest income. Hence, these appeals.

(5) We have heard learned counsel for the parties and perused the impugned orders passed by I.T.A.T..

(6) Section 14 of the Income Tax Act, 1961, provides 'heads of income' for the purposes of charging income tax and computing total income. Said Section classifies heads of income into six categories, namely, (A) salaries, (B) interest on securities (since omitted), (C) income from house property, (D) profits and gains of business or profession, (E) capital gains, and (F)

income from other sources. Undoubtedly, the interest income in question and the amount received by respondent / assessee from oustees in Dam area is covered under the last head i.e. income from other sources. Section 57 of the Act provides deduction permissible in respect of income chargeable under the head of 'income from other sources'. Clause (iii) of said Section provides deductions on 'any other expenditure' laid out or expended wholly and exclusively for the purpose of making or earning such income. C.I.T. (A) and I.T.A.T. have allowed the deductions under the aforesaid clause (iii) of Section 57 of the Act, by which revenue is aggrieved and filed these appeals. Apart from this, what is significant in the present case is that the respondent / assessee T.H.D.C., a Government of India enterprise, was doing its construction activities and not business activities in the relevant period and that is why the receipts from the employees and oustees in Dam area was treated by C.I.T. (A) and I.T.A.T., as capital receipts.

(7) In ***Tuticorin Alkali Chemicals and Fertilizers Ltd. v. Commissioner of Income Tax Vol. 227 I.T.R. page 172***, it has been held by the apex court that interest income is always

revenue in nature unless it is received by way of damages or compensation, but it has been further held that the assessee may be entitled to capitalize the interest payable by it. It is also observed by the apex court in said case that expenditure would be taxable as indicated for the purposes of business if the assessee's business had commenced. (In the present case, the T.H.D.C. was still at the stage of construction).

(8) In ***Commissioner of Income Tax v. Bokaro Steel Ltd. Vol. 236 I.T.R. page 315***, in similar circumstances, the apex court has held as under:-

> *"We have to consider whether the amounts received by the assessee under these five heads can be treated as income of the assessee for the relevant assessment years. The Tribunal has held that all these amounts (under items Nos. 1 to 4) received by the assessee have gone to reduce the cost of construction. These are in the nature of capital receipts which can be set off against the capital expenditure incurred by the assessee*

during the relevant assessment years. This view has been upheld by the High Court and hence the Department has come by way of the present appeals.

During these assessment years, the respondent-assessee had invested the amounts borrowed by it for the construction work which were not immediately required, in short-term deposits and earned interest. It has been held in these proceedings that the receipt of interest amounts to income of the assessee from other sources. The assessee has not filed any appeal from this finding which is given against it. In any case, this question is now concluded by a decision of this court in Tuticorin Alkali Chemicals and Fertilizers Ltd. v. CIT (1997) 227 ITR 172. Hence, we are not called upon to examine that issue.

We will take the first three heads under which the assessee has received certain amounts. These are, the rent charged by the assessee to its contractors for housing workers and staff employed by the contractor for the construction work of the assessee

including certain amenities granted to the staff by the assessee. Secondly, hire charges for plant and machinery which was given to the contractors by the assessee for use in the construction work of the assessee, and thirdly, interest from advances made to the contractors by the assessee for the purpose of facilitating the work of construction. The activities of the assessee in connection with all these three receipts are directly connected with or are incidental to the work of construction of its plant undertaken by the assessee. Broadly speaking, these pertain to the arrangements made by the assessee with its contractors pertaining to the work of construction. To facilitate the work of the contractors, the assessee permitted the contractors to use the premises of the assessee for housing its staff and workers engaged in the construction activity of the assessee's plant. This was clearly to facilitate the work of construction. Had this facility not been provided by the assessee, the contractors would have had to make their own arrangements

and this would have been reflected in the charges of the contractors for the construction work. Instead, the assessee has provided these facilities. The same is true of the hire charges for plant and machinery which was given by the assessee to the contractors for the assessee's construction work. The receipts in this connection also go to compensate the assessee for the wear and tear on the machinery. The advances which the assessee made to the contractors to facilitate the construction activity of putting together a very large project was as much to ensure that the work of the contractors proceeded without any financial hitch as to help the contractors. The arrangements which were made between the assessee-company and the contractors pertaining to these three receipts are arrangements which are intrinsically connected with the construction of its steel plant. The receipts have been adjusted against the charges payable to the contractors and have gone to reduce the cost of construction. They have, therefore, been

rightly held as capital receipts and not income of the assessee from any independent source."

In view of the principle of law laid down by the apex court in Bokaro Steel Ltd. Case (supra), quoted above, we do not find any error of law committed by the I.T.A.T. in allowing the deductions to the extent of 2.5% towards administrative costs on the interest income on short term deposits, and in further holding that the interest and rent received from its employees and oustees in Dam area had a nature of capital receipt, as the construction process was still on and the respondent / assessee had yet not started the business activity.

Questions of law stand answered accordingly.

(9) For the reasons as discussed above, all the three appeals are dismissed. No order as to costs.

(B.S. Verma, J.) **(Prafulla C. Pant, J.)**

26.06.2009

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