

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

I.T. A. Nos.165 & 166/Bang/2018
(Assessment Years : 2013-14 & 2014-15)

M/s. Bank Note Paper Mill India Pvt. Ltd.,
Admn. Building, Paper Mill Compound,
Note Mudran Nagar, Mysore-570 003

.... Appellant.

Vs.

The Income Tax Officer,
Circle 1(1)(3), Bangalore.

..... Respondent.

Appellant By : Shri G.S. Prashant, Advocate.

Respondent By : Shri G. Guruswamy, CIT (D.R)

Date of Hearing : 17.05.2018.

Date of Pronouncement : 23.05.2018.

O R D E R

Per Shri Inturi Rama Rao, A.M. :

These are the appeals filed by the assessee company directed against different orders of Commissioner of Income Tax (Appeals)-1, Bangalore dt.31.8.2017 for the Assessment Years 2013-14 & 2014-15. Since the issue involved in both the appeals is identical, we proceed to

dispose of both these appeals vide this common order. For the sake of convenience and clarity, the facts relevant to Assessment Year 2013-14 in ITA No.165/Bang/2018 are stated herein.

2. The grounds raised by the assessee for A.Y. 2013-14 are as under :

1. The Ld. CIT (A) erred in passing the order in the manner which he did.
2. The Ld. CIT (A) erred in confirming the addition made by AO of Rs. 21,71,46,114/- with regard to interest received on short term deposits, without appreciating the submission of the Appellant.
3. The Ld. CIT (A) ought to have appreciated that the short term fixed deposits were created out of the share capital received from promoters exclusively to meet the capital expenditure for setting up the green field project and as such the same is inextricably linked to project construction.
4. The Ld. CIT(A) erred in not considering the fact that, equity fund was invested solely for project implementation i.e. acquisition and construction of the assets of the project and there being a time lag for utilizing the fund the company instead of keeping the money in current account has invested in short term deposits with banks during the project construction period. The interest earned during the construction period is in the nature of capital receipts. The statement provided in the Annexure 1 linking the investment and the project expenditure establishes the inextricable link.
5. The Ld. CIT(A) erred in not considering the fact that, during this period the company was in construction stage and has no operational income. Entire activities of the company were directly related to construction and implementation of the green field project and all expenses related to construction have been considered as capital expenditure. The interest income earned on investments of equity funds which are earmarked for making capital expenditure during the construction/pre-production period are considered as capital receipt, as there is a direct nexus between the income and the construction of the project. As such, these are inextricably linked with project.

6. The Ld. CIT (A) ought to have appreciated that, the interest earned on funds primarily brought for infusion in the business could not have been classified as 'income from other sources. He has failed to appreciate that

since the income was earned in a period prior to commencement of business, it was in the nature of capital receipt and, hence, was required to be set off against pre-operative expenses.

7. The Ld. CIT(A) erred in stating that, the company has deposited the surplus fund in term deposits with the bank. He has failed to appreciate that the money invested by the company is not surplus, as they represent the equity capital funds earmarked exclusively to meet capital expenditure in setting up the company's Green Field project.
8. The Ld. CIT(A) ought to have appreciated the case law relied upon by the Appellant and in Appellant's own case the Hon'ble Tribunal has allowed the said issue in favour of Appellant.
9. Without prejudice, the disallowances/addition as confirmed by the learned assessing officer are arbitrary, excessive and ought to be deleted in toto.
10. The learned CIT(A) erred in confirming the levy of interest under Sections 234B, 234C and 234D of the Act.
11. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.

3. The brief facts are as under :

3.1 The assessee is a company incorporated under the provisions of Companies Act, 1956, a joint venture between the Bharatiya Reserve Bank Note Mudran Private Limited and Security Printing and Minting Corporation of India Ltd. which is set up for the purpose of developing, designing, manufacturing and supplying the currency paper and bank

note paper. During the year relevant to the assessment year under consideration, the assessee was in process of setting up of a plant at Mysore for the purpose of manufacturing currency paper. The assessee had received share capital from the Govt. of India and Reserve Bank of India (RBI) for the purpose of setting up of plant. The funds which were not immediately required for the purpose of setting up of a plant were utilized for the purpose of making deposit with the Bank, on which interest income of Rs.21,52,81,724 was earned by the assessee. The interest so earned was reduced from pre-operative expenses on construction, etc. of the plant. Therefore the interest income was not offered to tax.

3.2 The Assessing Officer not accepted the stand of the assessee and placing reliance on the decision of Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. Vs. CIT 227 ITR 1721 and brought to tax, the interest income under head 'income from other sources'. Being aggrieved, the assessee filed appeal before the CIT (Appeals), who vide impugned order had confirmed the action of the Assessing Officer. Being aggrieved, the assessee is in appeal before us.

4. The issue in appeal is squarely covered by the order of co-ordinate bench of this Tribunal in assessee's own case for A.Y. 2011-12, the author of this order is one of us i.e. Hon'ble A.M., in ITA No.692/Bang/2015 & C.O. No.177/Bang/2015 Dt.17.3.2017 wherein in para 7 held as under :-

" 7. *We heard rival submissions and perused material on record. The short issue that comes up for consideration in the present appeal is whether interest income earned by the assessee during the construction period on bank deposits made out of share application money received by it, is taxable as 'income from other sources' or it should go to reduce capital cost of the plant which is being set up by the assessee-company. Undisputedly, facts are that the said interest income was earned by the assessee-company on bank deposits made out of share capital received by it from the Reserve Bank of India. The share capital was received by the respondent-assessee-company to meet capital expenditure for setting up of assessee's factory. As the funds were not immediately required, the respondent-assessee made deposits with bank on which assessee earned interest. This interest income was treated as abatement of capital cost of the project/factory by the assessee-company in the books of account, whereas the AO was of the opinion that the same should be treated as revenue receipt and brought to tax placing reliance on the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra). The decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) was distinguished by the Hon'ble Supreme Court in the case of Bokaro Steel Ltd. ((236 ITR 315)(SC) wherein it was held that the ratio of the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) is not applicable where interest receipt is directly connected with or incidental to working of construction of the assessee's plant. The decision of the Hon'ble Supreme Court in the case of Bokaro Steel Ltd. (supra) was followed subsequently in the case of CIT vs. Karnal Co-operative Sugar Mills Ltd. (243 ITR 2). An identical issue had come up for consideration before the Hon'ble Jurisdictional High Court in the case of CITA vs. Karnataka State Agricultural Produce Processing and Export Corporation Ltd.(377 ITR 496). In that case the State Government Corporation earned interest on deposits temporarily kept out of grants received from the State Government was taxable or not? The facts are that the State Government Corporation earned interest during the construction period on the fixed deposits temporarily made out of State Government grants. The issue before the Hon'ble High Court was whether such interest income was taxable or should go to reduce the capital cost of*

the project. The Hon'ble High Court, after considering the decisions of the Hon'ble Supreme Court in the case of *Bongaigaon Refinery Petrochemicals Ltd. v. CIT (251 ITR 329)(SC)*, *Bokara Steel Ltd. (supra)*, and *Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra)* and its own decision in the case of *CIT v. Karnataka Power Corporation, (247 ITR 268)* and *CIT vs. Karnataka Urban Infrastructure and Development and Finance Corporation (284 ITR 582)* held that such interest income would go to reduce the capital cost of the project, is on the capital account and should not be brought to tax. The relevant portion of the judgment is as under:

“9. After hearing the rival contentions and perusing the material on record, we have noticed that the assessee-company is a Government owned company. In order to facilitate infrastructure facilities in various parts of the State of Karnataka, for increasing the export of horticultural produce, a sum of Rs. 10.00 crores was granted to the assessee. Before the utilisation of this grant amount, it was temporarily kept in fixed deposits and the interest was earned on the said amount. The assessee has placed certain additional evidence before the Tribunal to establish that the Government of Karnataka had specifically directed that interest earned on fixed deposits of grants pending utilisation should be treated as additional grant of the scheme and not to be treated as "income of the company". No liberty was provided to the company to make use of that the interest earned on the said amount kept in fixed deposits. Though the assessee-company is engaged in trading in agricultural produce, it has no power to make use of the said grant made by the Government of Karnataka other than for a particular scheme i.e., the said amount cannot be diverted for any other purpose other than for which it was sanctioned as per the Government Order dated 23.1.2007. Thus, the emphasis made by the revenue that the assessee-company being engaged in trading activities cannot be considered as a nodal agency of the State Government and the interest earned on the grants by the assessee-company has to be treated as income is not acceptable in view of the specific directions issued by the State Government regarding the utilization of the amount granted and on the interest accrued thereon.

10. The Tribunal relied on the Judgment of this Court in the case of Karnataka Urban Infrastructure Development Finance Corpn.'s case (KUIDC) (supra) wherein it is held that:

"The material on record shows that the very purpose of constitution of the assessee was to act as a nodal agency for implementation of mega-city scheme worked out by the Planning Commission. Both the Central and the State Governments are expected to provide requisite finances for implementation of the said project. The funds from the Central and State Governments

will flow directly to the specialised institutions/nodal agencies as grant and the nodal agency will constitute a revolving fund with the help of Central and State shares out of which finance could be provided to various agencies such as water, sewerage boards, municipal corporations, etc. The objective is to create and maintain a fund for the development of infrastructural assets on a continuing basis and, therefore, the assessee is a nodal agency formed/created by the Government of Karnataka as per the guidelines; there is no profit motive as the entire fund entrusted and the interest accrued therefrom on deposits in bank though in the name of the assessee has to be applied only for the purpose of welfare of the nation/States as provided in the guidelines; the whole Of the fund belongs to the State Exchequer and the assessee has to channelise them to the objects of centrally sponsored scheme of infrastructure development for mega-city of Bangalore. Funds of one wing of the Government is distributed to the other wing of the Government for public purpose as per the guidelines issued. The monies so received, till it is utilised, is parked in a bank. The finding recorded by the Tribunal clearly shows that the entire money in question is received for implementation of the scheme which is for a public purpose and the said scheme is implemented as per the guidelines of the Central Government and, therefore, the assessee is only acting as a nodal agency of Central Government for implementation of these projects. It is not the case of the Revenue that the assessee was carrying on any business or activities of its own while implementing the scheme in question. The unutilised money, during which the project could not be fully implemented, is deposited in a bank to earn interest. That interest earned is also again utilised for the implementation of the mega-city scheme which is also permitted under the scheme. Therefore, in computing the total income of the assessee for any previous year the interest accrued on bank deposits cannot be treated as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of mega-city scheme. Therefore, we do not find any error in the conclusion reached by the Tribunal that there was no income earned by way of interest by the assessee and setting aside the order of AO which is affirmed by the first appellate authority. The finding given by the Tribunal is purely a question of fact. We do not find any substantial question of law involved in this appeal and therefore, this appeal is liable to be dismissed at the stage of admission itself."

11. *In Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case (supra), the Apex Court has held that:*

"There is another aspect of this matter. The company, in this case, is at liberty to use the interest income as it likes. It is under no obligation to utilise this interest income to reduce its liability to pay interest to its creditors. It can re-invest the interest income in land or share, it can purchase securities, it can buy house property, it can also set up another line of business, it may even pay dividends out of this income to its shareholders".

12. *In the case of Karnataka Power Corpn. (supra), the Apex Court following the Judgment of Bokaro Steel Ltd's case (supra) has held that "interest receipts and hire charges from contractors are in the nature of capital receipts".*

13. *In the case of Bongaigaon Refinery & Petrochemicals Ltd., v. CIT [2001] 251 ITR 329/119 Taxman 488 the Apex Court considering the decision in Tuticorin Alkali Chemicals Ltd.'s case (supra) and Bokaro Steel Ltd.'s case (supra) has held that in Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case, the question related was with the interest earned by the Company during its formative period by investments while in Bokaro Steel Ltd.'s case (supra), it is so confined and did not apply where the receipts were directly connected with or were incidental to the work of construction of the assessee's plant. Accordingly, applying the law enunciated in Bokaro Steel Limited case allowed the appeal.*

14. *In the light of the judgments referred to above, we have examined the case on hand. It is clear that the assessee has received the grant of Rs 10.00 crores from the Government of Karnataka for a particular project i.e., for improvement of infrastructure and to promote export of horticultural produce. Before the said grant was utilized for the specific purpose it was parked in fixed deposits and the interest was earned and by the subsequent additional evidence produced by the assessee before the Tribunal, it is further made clear that the State Government has categorically specified that any interest earned on those grants originally granted has to be considered as an additional grant and not an income of the assessee-Company.*

15. *As explained by the Apex Court, in Bongaigaon Refinery & Petrochemicals Ltd.'s case, (supra), in Tuticorin's case, the investment in deposits was made by the Company during its formative period by investments and in Bokaro Steels Ltd.'s case (supra) the inextricable link between the interest earned and the set up of the plant was established. Thus, in the present case we are of the view that this is not an investment made subsequent to the setting up of the project but this is the unutilized income parked in fixed deposits for a temporary period and inextricable link for the interest earned on the grants and the*

original grant made by the State Government to set up a project is established as in Bokaro Steel case. ”

Respectfully following the ratios of the decisions laid down in the above cases, we hold that even in the present case also, interest earned should only go to reduce the capital cost of the project to be set up by the respondent company and it should not be brought to tax, as the interest is earned on capital account. The appeal of the revenue is dismissed.”

We do not see any reason to differ with decision rendered by the coordinate bench of this Tribunal (supra) in assessee's own case for earlier assessment years, the fact that whether the deposits are short term or long term has no bearing on the issue as the issue is required to be adjudicated having regard to the object of placing the deposits. The coordinate bench has decided this issue in favour of the assessee company having regard to the objects behind placing the deposits, the decision does not call for any interference. Accordingly, the appeals filed by the assessee are allowed.

5. In the result, the appeals of assessee are allowed.

Order pronounced in the open court on the 23rd day of May, 2018.

Sd/-
(N.V. VASUDEVAN)
Judicial Member

Sd/-
(INTURI RAMA RAO)
Accountant Member

Bangalore,

Dt. .05.2018.

*Reddy gp

Copy to :

1	Appellant	4	CIT(A)
2	Respondent	5	DR. ITAT, Bangalore
3	CIT	6	Guard File

Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.