

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH, INDORE**

**ITA No.530/Ind/2010
Assessment Year: 2007-08**

**ASST COMMISSIONER OF INCOME TAX
1(1), BHOPAL**

Vs

**M/s BHARAT OMAN REFINERIES LIMITED
A-BLOCK, OFFICE COMPLEX
GAUTAM NAGAR, BHOPAL**

Joginder Singh, JM and R C Sharma, AM

Dated: September 14, 2011

Appellant Rep by: Shri Arun Dewan, Sr. DR
Respondent Rep by: Arun Mehrotra, CA

ORDER

Per: R C Sharma:

This is an appeal filed by the Revenue against the order of CIT(A)-I, Bhopal, dated 12.04.2010 for the assessment year 2007-08.

2. The only ground taken by the Revenue is that the on the facts and in the circumstances of the case, the Id. CIT(A) has erred in deleting the addition of Rs. 18,56,427/- made by the Assessing Officer on account of misc. income and offered for taxation relying on the decision of the Hon'ble Supreme Court in *Bokaro Steel Limited, (1998) reported in 236 ITR 315*, even though the decision is not applicable in assessee's case.

3. Facts in brief are that the assessee company was incorporated on 25.02.1994 and was in the process of setting up of refinery in Bina and its business was yet to commence. The assessee furnished its return of income for assessment year 2007-08 on 25.6.2007 declaring total income at Rs. 4,17,14,064/-, which represented the interest income earned on bank and deposits with Governments. The AO noticed from the statement of preoperative expenditure that the assessee had shown misc. income of Rs. 18,56,427/- which was not offered for tax. The assessee submitted before the AO that the Misc. income consisted of following items :-

Sale of tenders for capital works	Rs. 18,06,747
Recovery of house accommodation	Rs. 41,400
Recovery of furniture fixture etc.	
Provided with house accommodation	<u>Rs. 8,280</u>

	Rs. 18,56,427
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It was submitted before the AO that the above amount was not offered for tax but reduced from preoperative expenditure in line with the decision of Hon'ble Supreme Court in the case of *CIT vs. Bokaro Steel Limited, (1998) 236 ITR 315 (S.C.)* as well as the order of CIT(A) in its own case for assessment year 2005-06. However, the AO had not accepted the submission of the assessee and made addition of Rs. 18,56,427/-.

4. By the impugned order, the Id. CIT(A) deleted the addition after having the following observations :-

"I have considered the submissions of the appellant and facts of the case. As regards receipt on account of tender forms it may be noted that the same issue was considered by Hon'ble High Court of Delhi in the case of Addl. CIT vs. India Drugs and Pharmaceutical Limited, (1983) 141 ITR 134 (Del); (1982) 9 Taxman 95 (Del) wherein it was held as under:-

"Held - So far as the receipts from the sale proceeds of trees, grass boulders and stone were concerned, they represented the sale proceed.

So far as the receipts on account of tender forms and by way of water and electricity charges to the contractors were concerned, they would not be treated as arising out of a source of income separate from the business which was being set up. Since, the business had not been fully set up, the receipts and payments would be clearly on capital account and hence not liable to tax. In a case where these receipts and payments pertains to the fixed structure of the company's business that was being set up, it would be inconsistent to hold that the expenditure incurred by the assessee prior to the setting up would be of a capital nature but the receipts would be of a revenue nature.

Hence, the impugned receipts were of a capital nature and were not liable to tax."

The above decision of Hon'ble Delhi High Court has been approved by the Hon'ble Supreme Court in *Bokaro Steel Limited, (1998) 236 ITR 315 (S.C.)*. Thus, the issue regarding the nature of receipts on account of tender forms, when the business was being set up, has been settled that these receipts were of capital nature. The ratio of the aforesaid decision of Delhi High Court is squarely applicable in the case of the appellant. Hence, the receipts on account of tender form were of capital nature.

In regard to house rent and furniture rent recovery, it may be noted that the issue has been decided by the Hon'ble Supreme Court in the case of *Bokaro Steel Limited, (1998) 236 ITR 315 (S.C.)*, wherein it was held as under :-

"Held, dismissing the appeal, that the first three heads of income were (i) 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, (ii) 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 (iii) 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 were directly connected with or incidental to the work of construction of its plant undertaken by the assessee. 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 were arrangements which were intrinsically connected with the construction of its steel plant. The receipts had been adjusted against the charges payable to the contractor and had gone to reduce the cost of construction. They had, therefore, been rightly held as capital receipts and not income of the assessee from any independent sources. "

Therefore, considering the facts and circumstances of the case and legal position of the issue, it is held that the receipts on account of tender forms, house rent and furniture rent recovered were of capital nature and the appellant had correctly reduced the same out of preoperative expenses as the business of the appellant had not yet been set up. Hence, the addition of Rs. 18,56,427/- made by the Assessing Officer is deleted."

5. We have considered the rival contentions, carefully gone through the orders of the authorities below and found that the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of Bokaro Steels Limited (supra) as well as by Hon'ble Delhi High Court in the case of India Drugs & Pharmaceuticals Limited (supra). The Id. CIT(A) after applying the proposition of law laid down in these cases to the facts of the instant case, had correctly held that receipts on account of tender form and recovery of house accommodation and furniture & fixture provided with house accommodation were of capital nature. No interference in his order is required.

6. In the result, the appeal of the Revenue is dismissed.

(This order has been pronounced in the open court on 14.9.2011.)