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**(2010) 10 P&H CK 0031**  
**In the Punjab And Haryana At Chandigarh**

Commissioner of Income Tax

APPELLANT

Vs

Arihant Threads Ltd.

RESPONDENT

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**Date of Decision :** 06-10-2010

**Acts Referred:**

Income Tax Act, 1961 — Section 260A

**Citation :** (2010) 10 P&H CK 0031

**Hon'ble Judges :** Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the revenue u/s 260-A of the Income Tax Act, 1961 (for short, "the Act") against the order dated 7.1.2004 of the Income Tax Appellate Tribunal, Chandigarh in I.T.A. No. 452/CHANDI/99 for the assessment year 1996-97 proposing to raise following substantial question of law:

i) Whether on the facts and circumstances of the case, the Hon'ble Income tax Appellate Tribunal is justified in holding that interest received by the assessee was a capital receipt and so is required to be set off against the project development and preoperative expenses?

2. The assessee derived income from its business activities of manufacturing yarn. In the year in question, the assessee was in the process of setting up its industrial unit and received interest income from the Fixed Deposit Receipts by way of margin money for import of machinery through the bank. The said interest income reduced the cost of the industrial unit. The Assessing Officer taxed the same, as income from other sources, rejecting the plea of the assessee that the interest only reduced the cost of setting up the unit and was not received as income by the assessee. On appeal, the CIT(A) upheld the plea of the assessee which has been affirmed by the Tribunal. The Tribunal observed:

31. In the instant case, the uncontroverted facts before us are that the assessee

in the process of setting up its industrial unit for manufacture of yarn had to import the machinery. There was an agreement between the assessee and the suppliers of the imported machinery and as per the terms of this agreement the assessee was required to open LoC in favour of the suppliers of the imported machinery by way of fixed deposits in the form of hundred per cent margin money. Under the terms of the agreement, the assessee deposited the money in the bank to open a LoC from its share capital money lying idle and unused for acquiring these assets. From the uncontroverted facts, one thing is established that the amount was deposited by the assessee in the bank as FDR to open a LoC out of the necessity for the purpose of acquiring an asset, which means that the activity of depositing the money out of the share capital was an activity incidental to the acquiring of the asset. In this case, from the facts it is clear that the assessee deposited the money only with a purpose to execute an agreement for the purchase of the machinery and so the deposits were directly relatable to the acquisition of the asset and hence there was a direct nexus between the purchase of machinery and the deposit of money in the bank. So, for acquiring the machinery for the purpose of setting up the industrial units, the interest income earned by the assessee could definitely reduce the cost of the machinery. Now, applying the law laid down by the apex Court in its decisions (*supra*), relied upon by the Id AR for the assessee, we find that the facts in the instant case of the assessee are exactly identical to the facts of the case of Karnal Cooperative Sugar Mills Ltd. (*supra*), decided by the apex court, because in the instant case also the assessee had deposited the money to open a LoC for the purchase/import of the machinery required for setting up its plant in terms of the agreement of the assessee with the suppliers and on this money so deposited by the assessee from its share capital money, which was lying idle, on which the impugned interest has been earned, in view of the decision of the apex court (*supra*), the deposit of money in the instant case of the assessee intrinsically linked with the purchase of machinery and so the interest was the capital receipt which would go to reduce the cost of machinery required to be purchased by the assessee. Hence, the order of the CIT(A) being in conformity with the decision of the apex court (*supra*), in which even the facts of the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (*supra*) were also discussed, is liable to be upheld. Accordingly, we confirm the order of the CIT(A) in this case and hold that the impugned interest received by the assessee was a capital receipt and so is required to be set off against the project development and preoperative expenses. Consequently, the grounds of appeal taken by the revenue are rejected.

3. The Tribunal relied upon judgment of this Court in Karnal Co-operative Sugar Mills Ltd. Vs. Commissioner of Income Tax, which was affirmed by the Hon'ble Supreme Court in Commissioner of Income Tax Vs. Karnal Co-operative Sugar Mills Ltd., , following earlier judgment in Commissioner of Income Tax Bihar-II Patna Vs. Bokaro Steel Limited, Bokaro, .

4. We have heard Learned Counsel for the parties and perused the record.
5. It is not disputed that the deposit by the assessee and interest accrued thereon was incidental to acquisition of asset as deposit itself was made towards margin money for opening the Letter of Credit. This being the undisputed factual position, the Tribunal was justified in holding that the matter is covered in favour of the assessee by judgments of the Hon"ble Supreme Court in Karnal Cooperative Sugar Mills Ltd. and Bokaro Steel Ltd.
6. Accordingly, the question of law raised by the revenue has to be decided against it.
7. The appeal is dismissed.