
(1994) 03 DEL CK 0019

In the Delhi High Court

Case No : Income-tax Reference No. 214 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Modi Rubber Ltd.

RESPONDENT

Date of Decision : 24-03-1994

Acts Referred:

Citation : (1994) 120 CTR 74 : (1995) ILR Delhi 239 : (1994) 208 ITR 379 : (1994) 73 TAXMAN 337

Hon'ble Judges : D.P Wadhwa, J;D.K. Jain, J

Bench : Division Bench

Advocate : B. Gupta and R.N. Verma, for the Appellant; S.K. Aggarwal and Vijay Vaish, for the Respondent

Judgement

D. P. Wadhwa, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal ("the Tribunal", for short) referred to this court the following question, stated to be a question of law, for its opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the interest income on investment of share capital derived by the assessed could not be brought to tax in the hands of the assessed-company because it has not started its business?"

2. The statement of case drawn up by the Tribunal is brief and we may reproduce the same :

"The assessed is a limited company. Its relevant accounting year ended on March 30, 1973. The company was still in the process of being commissioned and had not commenced production. The assessed-company had collected funds by way of share capital which were deposited in banks on which interest of Rs. 3,21,679 was earned. The assessed claimed before the Income Tax Officer that the said interest income was not assessable and that out of the expenditure of Rs. 21.61 lakhs, expenditure of Rs. 4 lakhs should be set off against the said interest income and loss of Rs. 83,200 should be computed as per the assessed's revised

return. The Income Tax Officer, however, held that the said expenditure could not be allowed as a deduction and he determined the interest income at Rs. 3,24,896 against which he allowed deduction of Rs. 8,096 on account of interest paid and computed the net income at Rs. 3,16,800.

The Commissioner of Income Tax (Appeals) accepted the assessed's claim substantially and computed the assessed's income at nil. The Commissioner of Income Tax (Appeals) relied on the decision of the Income Tax Appellate Tribunal, Patna Bench in Bihar Alloy and Steel Ltd. where the surplus funds available were deposited in short-term deposits and it was held that the said interest receipts would go to decrease the cost of the assets, following the principles of accountancy for determining the actual cost of the assets.

Before the Tribunal, the Revenue relied on Addl. Commissioner of Income Tax, New Delhi Vs. Indian Drugs and Pharmaceuticals Ltd., . The assessed relied on the decision of the Income Tax Appellate Tribunal, Madras Bench "B" (Special Bench) dated January 16, 1982, in Arasan Aluminium Industries (P.) Ltd. [1982] 1 ITD 10. The Tribunal followed the Special Bench decision after noting different High Court decisions."

3. If we refer to the order of the Tribunal passed in appeal by the Revenue against the order of the Commissioner of Income Tax (Appeals), the Tribunal said that the assessed's case was covered by the decision of the Income Tax Appellate Tribunal Special Bench in (1982) 1 ITD 10 . In that case, the company was engaged in the process of erection of its plant and machinery and construction of factory and had received interest income on investment of its funds and had also incurred expenditure on payment of interest on loans taken by the company. The net interest receipts were claimed as not taxable on the ground that the said receipts would go to reduce the pre-operational expenses. The Tribunal accepted the assessed's claim observing that the assessed's claim was nothing more than the application of the principles laid down by the Supreme Court in Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, . The Tribunal said that just as any expenditure on interest during the construction period went to increase the project cost, any interest earned would go to reduce the capital cost especially when the income had been earned not through long-term lending and investments, but in the course of entrustment for safe custody of funds to a bank while awaiting use in the capital project. This decision of the Income Tax Appellate Tribunal (Special Bench) in (1982) 1 ITD 10 has not been followed in various decisions of the High Courts in similar circumstances. The assessed had urged before the Tribunal that what was held in fixed deposits were not long-term investments but in the course of entrustment for safe custody of funds to the banks while the said moneys were awaiting use in the capital project, and further that there was no income earning activity during the period when the assessed was setting up its factory, and, Therefore, as per accounting practice, the net result of the said period should be seen and the Revenue was not justified in picking up only one activity and

assessing the income from the investment of surplus funds. The Tribunal accepted the contention of the assessed. Three decisions of the High Courts in MADHYA PRADESH STATE INDUSTRIES CORPORATION LTD. Vs. COMMISSIONER OF Income Tax, M.P., ; Commissioner of Income Tax, Bombay City-II Vs. United Wire Ropes Ltd., and ADDITIONAL COMMISSIONER OF Income Tax, MADRAS-I Vs. MADRAS FERTILISERS LTD., , were not considered relevant by the Tribunal as it was stated that these cases were either before, or did not take notice of, the Supreme Court decision in Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, . The Tribunal also took note of the decision of the Delhi High Court in Addl. Commissioner of Income Tax, New Delhi Vs. Indian Drugs and Pharmaceuticals Ltd., , where the High Court had observed that "if, for example, the surplus moneys of the company are invested to earn interest, the interest income would certainly be assessable under the head "Income from other sources"", but said that it was merely an obiter dicta and that the ratio of the said decision was that the receipt and payments before the business had been fully set up, would be clearly on capital account and if the receipts and payments pertain to the fixed structure of the company's business which was being set up, it would be inconsistent to hold that the expenditure incurred by the assessed prior to the setting up would be of a capital nature, but the receipts would be of revenue nature.

4. We may note the various decisions of the High Courts and the Supreme Court referred to above, and some more, on the question on which we have to give an answer.

5. In Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, , the question before the Supreme Court was whether the interest payment of Rs. 2,38,614 represented an element on the actual cost of the machinery, plant, etc., to the assessed and as such depreciation and development rebate were admissible with reference to that amount also. In this case, the assessed-company had borrowed considerable sums of money from the Industrial Finance Corporation of India for the installation of machinery and plant, and during the relevant period and for the period prior to the commencement of its business, the assessed paid Rs. 2,38,614 as interest. The case of the assessed was that the payment of interest added to the cost of machinery and plant to the assessed and as such while calculating depreciation admissible to the assessed, the interest paid should be treated as part of the cost of the machinery and plant to the assessed. The court observed that (at page 175) : "the accepted accountancy rule for determining the cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalised and added to the cost of the fixed assets which have been created as a result of such expenditure. The above rule of accountancy should, in our view, be adopted for determining the actual cost of the assets in

the absence of any statutory definition or other indication to the contrary." The court also referred to section 208 of the Companies Act, 1956, which made provision for payment of interest on share capital in certain contingencies. The court, Therefore, held that if interest was paid on money not raised by way of share capital but taken on loan for the purpose of defraying the expenses of construction of any work or building or the provision of any plant, the sum so paid by way of interest might be charged to capital as part of the cost of construction of the work or building or the provisions of the plant.

6. In MADHYA PRADESH STATE INDUSTRIES CORPORATION LTD. Vs. COMMISSIONER OF Income Tax, M.P., , the question was if the sum received by way of interest by the assessed should be taxed u/s 28 as business income or u/s 56 as income from other sources. The assessed, a Government company, was incorporated for taking over and running certain concerns of the State Government. For the assessment year in question, the assessed did not carry on any business nor was there any production. The share moneys received by the company not being immediately required, were deposited in call-deposits in certain banks. The court held that the deposit of share capital in a bank could not be said to be an act of money-lending and, hence, the interest income was properly assessable as "Income from other sources" u/s 56 of the Act.

7. In Traco Cable Company Ltd. Vs. Commissioner of Income Tax, , the assessed, a public limited company, was engaged in the business of manufacture of wires, cables, etc. Though the company obtained the certificate of commencement of business on July 30, 1961, the directors' report for the year ended March 31, 1962, said that the company would go into operation before the end of 1963. The company had deposited in banks the share capital collected and for the year ended March 31, 1962, it earned a sum of over Rs. 68,000 as interest. During this period, the company also incurred an expenditure of over Rs. 34,000 by way of salary and wages to its employees, printing, stationary, etc. Clause (v) of object 3 of the memorandum of association of the company was "to invest and deal with the funds of the company not immediately required upon such securities and in such manner as may from time to time be determined." The assessed-company claimed that the deposit of the share capital made by it in banks was a business carried on by the company as per its memorandum of association, and that the interest thereby earned was income from business and as such the expenditure was an allowable deduction. This claim was rejected. The Tribunal held that the amounts received as interest were income from other sources and that the expenditure incurred was not an allowable deduction even u/s 57 of the Act. The court approved the decision of the Tribunal and said that the clause of the memorandum of association which was relied on by the assessed only empowered the company to invest and deal with the funds of the company not immediately required, and that all that the company did was to deposit in banks the share capital received instead of keeping it in its own safe. This, the court said, was done because the company had not commenced business and the amounts were not immediately required for any business, and that the receipt of

income by interest was only incidental or consequential on the deposit. The court also held that the deposit of share capital by the company was not a business carried on by the company, and further that the expenditure incurred was not incurred for the purpose of making or earning interest received by the company on the deposit of the share capital, and, thus, the office and establishment expenses unconnected with the earning of the company or keeping the company alive were not permissible deductions u/s 57 of the Act.

8. Strong reliance was placed by the assessed on a decision of this court in *Addl. Commissioner of Income Tax, New Delhi Vs. Indian Drugs and Pharmaceuticals Ltd.*, . The Revenue also relied on this judgment, on account of certain observations made by the Bench to which we will presently refer. In this case, the assessed-company was promoted to start the manufacture of drugs and pharmaceuticals and was in the process of setting up its factory building. During the relevant year, the factory building was under construction and the plant and machinery was in the process of installation. The business had not been set up and none of the units had commenced production. The assessed's gross receipts from sale of tender documents, etc., regarding construction and erection of plant and machinery to contractors amounted to Rs. 50,450, and after deduction of estimated expenditure the net receipts came to Rs. 40,540. The assessed also realised amounts of Rs. 28,241 by way of sale proceeds of trees, grass, etc., and Rs. 17,818 by way of sale proceeds of stones and boulders. This was consequential to the parcel of land being cleared for the purpose of construction of the factory. The assessed realised yet another amount of Rs. 7,520 on the supply of water and electricity at the site. The Revenue contended that all these amounts represented income from other sources. The Tribunal held that these receipts were directly related to the capital structure of the business which was being set up, and that they did not by themselves set up an independent source of income unrelated to the business which was being set up. The Tribunal held that it was from this point of view that these receipts were distinguishable from interest on deposits of surplus money, and that interest was realised by utilisation of surplus money and the utilisation created a separate independent source. The Tribunal was, Therefore, of the opinion that the impugned receipts did not create any independent source and were in fact inextricably linked with the process of setting up the business by special reference to the clearance of the land and erection of building and equipment. In coming to this conclusion, the Tribunal relied on a decision of the Supreme Court in *Nalnikant Ambalal Mody Vs. Commissioner of Income Tax, Bombay*, , where the court had pointed out that whether an income falls under one head or another had to be decided according to the common notions of practical men, and the question under which head an income came could not depend on when it was received. On a reference to this court by the Revenue, the court agreed with the reasoning given by the Tribunal and holding that the receipts were clearly referable to the source of business, profession or vocation and since it was not fully set up at the time they were received, the receipts were of a capital nature. The court also referred to

the decision of the Supreme Court in *Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad*, and held that the receipts were directly related to the capital structure of the business and they could not be considered as an independent source of income unrelated to the business which was being set up. Considering the argument of the Revenue based on a decision of the Calcutta High Court in *Commissioner of Income Tax Vs. Ajmera Industries Private Ltd.*, the court held that in that case the question was whether the income derived by way of rent from a certain building was assessable as income from business or as income from house property, and that was not the question here. The court said that it was not as if every item of receipt, prior to the setting up of a business, would be only capital in nature. Elaborating, the court said that if the surplus monies of the company were invested to earn interest or if, as in *Commissioner of Income Tax Vs. Ajmera Industries Private Ltd.*, the building constructed was not used by the company but let out to earn rental income, the interest or the rental income would certainly be assessable under the head "Income from other sources". On these observations, the Revenue relies in support of the present case before us. This court held that the receipts in that case were from sources which were not independent but which were inextricably linked with the process of the setting up of the business.

9. In *Commissioner of Income Tax Vs. Seshasayee Paper and Boards Ltd.*, the assessed, a public limited company, invested its paid-up share capital and loans obtained from the I. C. I. C. I. and Export and Import Bank, Washington, in banks on call-deposits and received interest during the relevant year. The assessed adjusted the interest payable on its loans against the interest received. The assessed had not established its factory during the year in question and there was, Therefore, no question of computing its business income during that year. The Tribunal had held that it was justifiable for the assessed to claim set-off of the entire interest as attributable to the purchase cost getting reduced. The court held that the Tribunal was not right in holding that the interest receipts could not be assessed and the difference between the interest paid and the interest received should be capitalised. The court said that the interest earned by the assessed on investment of share capital in call-deposits could be assessed separately under the head "Other sources".

10. In *Commissioner of Income Tax Vs. Cap Steel Ltd.*, the question before the court was whether the Tribunal was right in law in holding that the net interest income should be capitalised in each year. The assessed, a public limited company, had borrowed funds from financial institutions for the purpose of installation of plant and machinery and also for construction of buildings. It deposited the excess money available with it in term deposits and earned interest income out of those deposits. The assessed had contended that the interest income so received should not be brought to tax and that it should be given set off against the interest payable on that part of the borrowings, and that the net interest should be capitalised. The Tribunal accepted the contention. The court said that before it there was no dispute and indeed there could not be any

dispute as to the capitalisation of the interest on the borrowals, and that the dispute, however, was only "whether it should be net interest or gross interest?" The court held that only the gross interest should be capitalised and not the net interest. It answered the reference in favor of the Revenue.

11. In Commissioner of Income Tax Vs. Bokaro Steel Limited (No. 1), (assessment years 1965-66 to 1971-72), and Bokaro Steel Ltd. Vs. Commissioner of Income Tax (No. 2), , the assessed, a Government company, was constructing an integral iron and steel works during the relevant assessment years. The assessed had certain receipts which it grouped under the heading "Miscellaneous income" in the various years. These the assessed had set off against the expenses of the year and the balance expenses were then capitalised. These miscellaneous income were the receipts from properties let out to outsiders (contractors' employees); hire charges received from the contractors for the use of plant and equipment let out to them; interest on advances to the contractor; interest on short-term deposits; miscellaneous income; royalty; land-rent and liquidated damages received from the contractors. The assessed contended that these receipts were not taxable as these were incidental to the assessed's business of construction and that these had gone merely to reduce the cost of construction. The assessed also contended that the business of the assessed-company had already commenced with its incorporation under the Companies Act. The Tribunal held that the receipts from letting out properties to outsiders were chargeable u/s 22 of the Act, but the other receipts were incidental to the business of the assessed and were not assessable. The Patna High Court, on reference, however, reversed the order of the Tribunal even on this point holding that the occupation of the company's quarters by the employees of the contractor was incidental and subservient to the business of the assessed, and all the receipts were incidental to the overall construction work during the pre-business period, and that none of the receipts were assessable to tax. In Bokaro Steel Ltd. Vs. Commissioner of Income Tax (No. 2), , which pertained to the assessment year 1972-73, the assessed, before the construction of its plant was complete, had received various amounts and one of such amounts was interest on short-term deposits with the banks on amount received from the Government. The Tribunal had found that the surplus money not required for business had been kept in short-term deposits in the banks. The court held that the bank deposits were not incidental to the business of the assessed nor were they incidental to the construction of the factory of the assessed, that the interest on short-term deposits constituted income of the assessed and it was assessable u/s 56 of the Act as income from other sources.

12. In Commissioner of Income Tax Vs. Andhra Farm Chemicals Corporation, , the assessed was a subsidiary company of Andhra Sugars Limited. The assessed-company was set up for the purpose of manufacturing Chemicals. During its formative period certain money was lying with it and with a view not to keep that money idle it deposited the same with the holding company. Meanwhile, the assessed-company required some money which it borrowed from the holding

company. It paid interest on this borrowed money and this was sought to be set off against the interest earned on the deposits made by the assessed-company with the holding company. The Tribunal held that though for the purpose of accounting there appeared to be two independent transactions - one by way of deposit by the assessed and another by way of loan taken by the assessed - in truth and in reality there was only one transaction. The Tribunal also held that it was not a case of deduction nor was it a case of allowing an expenditure incurred, but that the question was what was the real and true interest income derived by the assessed? The court on a reference said that the Tribunal's finding was that these were not two independent transactions but only one transaction. The court, Therefore, reframed the question as under (at page 661) :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that though, for the purpose of accountancy, there appeared to be two independent transactions in truth and in reality there was only one transaction?"

13. The court did not hold that the finding of the Tribunal that there was only one transaction was not justified or warranted. In this view of the matter, the court held that no question of law arose in the matter.

14. In Commissioner of Income Tax Vs. Derco Cooling Coils Ltd., , the question before the court was whether, on the facts and in the circumstances of the case, the amount of Rs. 18,913 being interest received by the assessed-company from bank deposits could not be brought to tax. The assessed-company had not yet gone into production and for the purpose of construction and setting up of an industry in borrowed funds and paid interest thereon. At the same time the assessed-company earned interest on the share capital monies received from the public which was kept in fixed deposit with the banks. In the original return, the assessed-company showed the interest received, but subsequently claimed that this amount shall not be treated as income as it was liable to be deducted from the interest paid on term loans and the net interest arrived at was to be capitalised. Thus, the contention was the interest received during the pre-production or construction period shall be reflected in the capital cost of the project and it should go to reducing the capital cost. The court held that the interest received by the assessed-company from bank deposits could be brought to tax as income from other sources. The court observed that the amount of expenditure out of which the interest received was sought to be deducted related to term loans used for construction and setting up of the plant. The receipt in question arises out of share capital money deposited with the bank which might or might not be utilised for the purpose of setting up of the plant. The very idea of set-off connotes that there is a nexus or correlation between the item of receipt and the item of expenditure. It is not permissible to set off an item of receipt from out of an item of expenditure unrelated to the former or incurred in a different connection. The court held that viewed from any angle there was no justification to treat the amount of interest received on share capital as

something other than income, and that to treat the receipt in question as income would not in any way do violence to the normal or ordinary meaning of the term "income". The court also relied upon another Bench decision in *Andhra Pradesh Carbides Ltd. v. CIT* [1992] 98 ITR 386 date of decision November 19, 1986. In this latter case, the question was also whether the Tribunal was justified in holding that the interest paid in respect of borrowing from the Andhra Pradesh Industrial Development Corporation Limited by the assessed could not be allowed to be set off against the interest income earned by the assessed. The court said that there was no connection between the two amounts; that the amount upon which interest was paid to Andhra Pradesh Industrial Development Corporation Limited was raised by way of loan for setting up the plant and the interest income was earned on the contributions made by the shareholders towards the shares allotted to them; that both were distinct items and it was not possible to see any reasonable connection between them; and that neither u/s 57(iii) of the Act nor by applying the test of a prudent person managing his affairs, could it be said that the interest earned on the contributions made by the shareholders could be set off against the interest payable by the assessed.

15. In *Commissioner of Income Tax Vs. Sponge Iron India Ltd.*, , apart from the question as to when business could be said to have been commenced, the court was called upon to decide whether the assessed was entitled to the deduction of the administrative expenses and exploration and mining expenses from out of its interest income. The Tribunal came to the conclusion that the business was not started and, on that basis, the assessed's claim for determination of loss on account of administrative expenses and charges for exploration and mining was not accepted. The Tribunal, however, took the view that the interest earned during the period should go to reduce the capital cost inasmuch as the interest was on short-term deposits pending utilisation of available funds on erection, construction, etc. The allocation of expenses under the head "Exploration, general administration and capital items" was found to be prima facie justifiable under the relevant principles of accountancy. The Tribunal further held that there was no basis to conclude that allocation was other than bona fide. The Tribunal directed that the assessed's claim for capitalisation be considered by the Income Tax Officer in the light of the decisions of the Special Bench in (1983) 3 ITD 796 , and (1982) 1 ITD 10 . The court held that the business had not commenced and it could not be said that in the course of business the assessed was earning interest on deposits. It was held that the interest income could not be treated as business income. The court, thus, held that the assessed could not be entitled to the deduction of administrative expenses and exploration and mining expenses from out of the interest income. Then the question was whether the assessed could claim to set off interest received on short-term deposits against the unadjusted expenditure for the assessment years in question. The assessed had allocated the expenses as against three items, viz., exploration, general administration and capital. The claim of the assessed was that the short-term capital amount was invested on short-term deposits, pending utilisation of

available funds on erection, construction, etc., and the interest earned on such deposits should go to reduce the capital cost. The Tribunal accepted the claim of the assessed in principle, following the two Special Bench decisions noted above, and it observed that the Income Tax Officer was not justified in dismissing the assessed's claim in general terms and it could not be said that the entire interest income was to be treated as income from other sources without any deduction. The Tribunal, Therefore, directed the Income Tax Officer to give a fresh consideration de novo in accordance with law. The court said that though it approved the observations made by the Tribunal that the administrative expenses having a nexus with the earning of interest income would qualify for deduction, the direction given by the Tribunal in general terms to consider the question of the deductibility in the light of the Special Bench decision in (1982) 1 ITD 10 , was not correct, having regard to the decision of the court in Commissioner of Income Tax Vs. Derco Cooling Coils Ltd., . The court then went on to observe as under (at page 784) :

"In that case (Commissioner of Income Tax Vs. Derco Cooling Coils Ltd., , the Division Bench held that unless there is a nexus or correlation between the item of receipt and expenditure, it is not permissible to set off an item of receipt against an item of expenditure unrelated to the former or incurred in a different connection. The Division Bench held that an item of receipt which is prima facie income cannot be transposed into capital account unless the set off is in respect of a related item of expenditure. Thus, the principles enunciated in the judgment of the Special Bench in (1982) 1 ITD 10 , cannot be applied without the qualifications which were pointed out by the Division Bench of this court in the abovementioned case. Subject to this qualification, we do not see any illegality in the direction given to the Income Tax Officer to consider the claim of the assessed for set off of interest received on short-term deposits against unadjusted expenditure to reduce the capital cost to the extent admissible."

16. Against this decision of the Andhra Pradesh High Court, the assessed filed a SLP in the Supreme Court but, it appears, that the same was dismissed - see [1993] 204 ITR 11.

17. Before the Income Tax Officer the assessed also relied on the objects as per the memorandum of association of the assessed-company. The memorandum of association had main objects and also objects incidental or ancillary to the attainment of the main objects. In its submission, the assessed relied on one of its subsidiary objects which is as under :

"B-19 : To invest any moneys of the company not immediately required for the purposes of its business in such manner as may be thought fit and to lend money to such parties and on such terms, with or without security, as may be thought to be for the interest of the company, and in particular to customers of, and persons having dealings with, the company or to companies, firms or persons carrying on any business which may be useful or beneficial to this company."

18. The Income Tax Officer rejected this claim of the assessed. He was of the view that this clause could not be interpreted to mean that earning of interest income from surplus funds amounted to business activity. He pointed out that the assessed-company was neither a money-lender, not a banking institution, nor a finance body, and interest earned on investment of surplus funds did not amount to carrying on of any business.

19. Thus, we find there is a chain of authorities of the High Courts holding the view that share money received by the assessed-company, if not immediately required, and placed by the assessed in fixed deposit receipts with banks to earn interest, would be income under the head "Income from other sources". In the present case as well, the assessed was in the process of setting up its factory and had not come into business and the share capital which was its own money was invested by it in fixed deposits in the banks to earn income. The interest income so earned was not related to the activity of the assessed of construction of its factory as such. The interest was also not earned on borrowed capital by the assessed and could not be charged to capital as part of the cost of construction of the factory. The principle laid down by the Supreme Court in *Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad*, would not, Therefore, be applicable. The decision of this court in *Addl. Commissioner of Income Tax, New Delhi Vs. Indian Drugs and Pharmaceuticals Ltd.*, on which the assessed placed strong reliance, is also of no help to it. As we have seen above, in that case, the land had to be cleared and tender invited for construction of the factory and on that account the court held that this activity was inextricably linked with the process of setting up the business of the assessed. In that case, the observation of the court that surplus money of the company if invested would earn interest, would certainly be assessable under the head "Income from other sources", was no doubt obiter dicta, but in our view it is nevertheless a correct statement of law. Share capital is raised by a company for setting up an industrial undertaking or utilising it for any other purpose. It is the money of the company. This cannot be so in the case of loan which is raised for a specific purpose. Clause B-19 of the subsidiary objects of the company is not applicable as it merely provided for investing of monies not immediately required for the purposes of its business when it had not started its business and the process of construction of the factory was still on. The activity of the deposit of surplus funds out of the share capital could not be said to be incidental to the construction of the factory. Interest income from bank deposits thus accrued or arose out of an independent source of income during the period when the business had neither been set up nor had commenced and was assessable as income from other sources. In view of our discussion, the answer to the question referred becomes quite self-evident.

20. We, Therefore, answer the question in the negative, in favor of the Revenue and against the assessed.