
(2025) 09 DEL CK 0748
In the Delhi High Court
Case No : ITA No. 475 Of 2025

Pr. Commissioner Of Income Tax 1, Delhi	APPELLANT
Vs	
Brahma Center Development Pvt. Ltd	RESPONDENT

Date of Decision : 23-09-2025

Acts Referred:

Income Tax Act, 1961 — Section 36(1)(iii), 143(3), 263

Citation : (2025) 09 DEL CK 0748

Hon'ble Judges : V. Kameswar Rao, J; Vinod Kumar, J

Bench : Division Bench

Advocate : Sanjay Kumar, Monica Benjamin, Easha, Kavita Jha, Vaibhav Kulkarni, Akash Shukla

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

CM APPL. 60754/2025, CM APPL. 60755/2025 (Condonation)

1. For the reasons stated in the applications, the delay of 56 days in filing and 546 days in re-filing the appeal is condoned.

2. The applications are disposed of.

ITA 475/2025

3. The appeal lays a challenge to the order dated 17.07.2023 passed by the learned Income Tax Appellate Tribunal, Delhi Bench ?A?, New Delhi ("ITAT") whereby the ITAT has allowed the appeal filed by the assessee/respondent by stating in paragraph 5 onwards as under:-

5. The issue of taxability of interest from FDRs in the case of the assessee stands covered by the judgement in the Appellant's own case by the order of the ITAT (ITA No. 4341 & 4342/Del/2019) in Appellant's own case for AYs 2012-13 and 2013-14, wherein it was held as under:

"Hon'ble jurisdictional High court considered the decision of the Hon'ble Apex Court in the case of Ms. Tuticorin Alkal Chemicals and Fertilizers Ltd (supra) and Bokaro Steel Ltd (supra) in Indian Of Panipat Power Consortium Ltd Vs ITO (2009) 315 ITR 255(Del) and held that the interest earned on funds primarily brought for infusion in the business could not have been classified as income from other sources. Further, unlike in the case of M/s. Tuticorin Alkali Chemicals and Fertilizers Ltd (apra in the case on hand, the assessee had already commenced business (Para 15)

6. The aforesaid observation was made by the ITAT while adjudicating the appeal against the order passed under section 263 of the Act by the Ld. Principal Commissioner of Income Tax for AYS 2012-13 and 2013-14. The Ld. PCIT has passed an order dated 28 March 2019, directing the AO to re-examine the treatment of interest on deposits for AYS 2012-13 and 2013-14 The ITAT quashed the order passed under section 263 of the Act and allowed the appeal of the Appellant. The said order of the ITAT was challenged before the Hon'ble Delhi High Court by the Income tax department. The Hon'ble Delhi High Court (ITA 116/2021 and ITA 118/2021) has adjudicated the substantial issue in favour of the assessee vide judgment dated 5 July 2021. The relevant paragraph of the Hon'ble Delhi High Court's judgment, wherein the treatment adopted by the Appellant has been upheld is reproduced as below:

"The reliance placed on behalf of the revenue on the judgement of Supreme Court in Tuticorin A Chemicals & Fertilizers Limited v CITS (1997) 227 ITR 172 (SC) was not apposite, given The finding of fact returned by the Tribunal that there was a nexus between the investment of funds received from investors located abroad and the real estate project The Tribunal in paragraph 15 of the impugned order has distinguished (and, in our view, correctly) the judgement of the Supreme Court in Tuticorin Alkali Chemicals Case and applied the later judgement of the same Court in CIT v Bokaro Steels Limited (1999) 236 ITR 315 (SC)." [para 12.1]

"In the instant case, it was not as if the funds were surplus and therefore invested in a fixed deposit. The funds were received for the real estate project and while awaiting their deployment They were invested as a fixed deposit which generated interest. This fits in with the dicta of the Supreme Court at Bokaro Steels Case and of this Court in Indian Of Panipat Power Case NTPC Sal Power Case, and Jaypee DSC Ventures Case." (para 14.5)

7. Since, the matter stands adjudicated in assessee's own case by the Hon'ble jurisdictional High Court in their favour, in the absence of any change in the material facts and the legal proposition, the appeal of the assessee is hereby allowed.

8. In the result, the appeal of the assessee is allowed."

(Emphasis supplied)

4. The facts to be noted are that the assessee/respondent company is engaged in the business of promotion, construction and development of projects on land allotted by the Haryana State Industrial and Infrastructure Development Limited (?HSIIDC?). As this agreement was with HSIIDC, the assessee /respondent company was required to pay purchase consideration in instalments towards acquisition of land. The company raised funds from non-residents shareholders/ investors outside India through Compulsory Convertible Debentures (?CCDs?) bearing interest cost of 12% per annum, to fulfil its payment obligation towards HSIIDC. The amount of interest payable on CCDs have been duly capitalised to the cost of the project.

5. The surplus amount of funds raised by the assessee, which were not due immediately by way of instalment payment were deposited in the bank as FDR. It was argued on behalf of the assessee that the FDR has a close nexus to the project and hence, the interest from FDR should not be treated as income from other sources.

6. On the issue of taxability of interest from FDRs, the Tribunal relied upon the judgment in the assessee/respondent's own case decided by the ITAT being ITA No. 4341 & 4342/Del/2019 relatable to the Assessment Years (?AYs?) 2012-13 and 2013-14. The observation of the ITAT in those appeals has been reproduced in paragraph 5 of the impugned order, which have already referred to above.

7. The conclusion of the ITAT in the impugned order is that the aforesaid was the observation made by the ITAT in the appeal against the order passed under Section 263 of the Income Tax Act, 1961 (?the Act?) whereby the Principal Commissioner, Income Tax (?PCIT?) exercising revisional powers had passed the order dated 20.03.2019, directing the Assessing Officer (?AO?) to re-examine the treatment of interest on deposits for AYs 2012-13 and 2013-14. The ITAT quashed the order passed under Section 263 of the Act and allowed the appeal. It is the said order of the ITAT under Section 263 of the Act, which was challenged by the Revenue before this Court, this Court in ITA 116/2021 and ITA 118/2021 had adjudicated the issue, though in the context of Section 263 of the Act.

8. The submission of Mr. Sanjay Kumar, learned Senior Standing Counsel for the Revenue/appellant is primarily that the appeals which have been decided by this Court are related to an issue connected with Section 263 of the Act and cannot have a bearing in so far as the impugned order is concerned as the impugned order is primarily passed in an appeal filed by the assessee/respondent challenging the order of the CIT (Appeals), against regular assessment under Section 143(3) of the Act.

9. This submission of Mr. Kumar is contested by Ms. Kavita Jha, learned Senior Counsel appearing for the assessee/respondent by drawing our attention to the order passed by this Court in the aforesaid appeals and has contended that even though the issue was relatable to Section 263 of the Act, one of the issues which

was decided by this Court was whether the view taken by the AO in the given facts was a plausible view. In that context, the AO who had also dealt with the issue which has been canvassed by Mr. Kumar, the ITAT decided in favour of the assessee/respondent inasmuch as the funds generated by the assessee/respondent from non-resident shareholders/investors outside India, which were not due immediately by way of instalment payment, and had been deposited in the bank as FDR, were actually connected with the project in question i.e. for the purchase of land for which instalments were to be paid to HSIIDC.

10. In this regard, she has relied upon the judgment of this Court in Principal Commissioner of Income Tax, New Delhi and Brahma Centre Development Pvt. Ltd., [2021] 437 ITR 285 (Del), of the aforesaid two appeals dated 05.07.2021 in paragraphs 12, 12.1, 12.2, 12.3, 13 and 14.5, which we reproduce as under:-

"12. According to us, the AO, having received a response to his query about the adjustment of interest, in the concerned AYs, against inventory, concluded that, there was a nexus between the receipt of funds from investors located abroad and the real estate project, which upon being invested generated interest. Thus, it cannot be said that the conclusion arrived by the AO, that such adjustment was permissible in law, was erroneous.

12.1. The reliance placed on behalf of the revenue on the judgement of Supreme Court in Tuticorin Alkali Chemicals & Fertilizers Limited v. CIT, (1997) 227 ITR 172 (SC) was not apposite, given the finding of fact returned by the Tribunal that there was a nexus between the investment of funds received from investors located abroad and the real estate project. The Tribunal, in paragraph 15 of the impugned order, has distinguished (and, in our view, correctly) the judgement of the Supreme Court in Tuticorin Alkali Chemicals Case and applied the later judgement of the same Court in CIT v. Bokaro Steels Limited, (1999) 236 ITR 315 (SC).

12.2. Furthermore, these judgements were also considered by a Division Bench of this Court in Indian Oil Panipat Power Consortium Ltd. vs. Income-tax Officer, [2009] 181 Taxman 249 (Delhi)/[2009] 315 ITR 255 (Delhi) wherein after appreciating the ratio of the aforementioned judgements of the Supreme Court, the following was observed as follows.

"5. In our opinion the Tribunal has misconstrued the ratio of the judgment of the Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case (supra) and that of Bokaro Steel Ltd. (supra). The test which permeates through the judgment of the Supreme Court in Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case (supra) is that if funds have been borrowed for setting up of a plant and if the funds are 'surplus' and then by virtue of that circumstance they are invested in fixed deposits the income earned in the form of interest will be taxable under the head 'income from other sources'. On the other hand the ratio of the Supreme Court judgment in Bokaro Steel Ltd.'s case (supra) to our mind is that if income is earned, whether by way of interest or in any other manner on

funds which are otherwise 'inextricably linked' to the setting up of the plant, such income is required to be capitalized to be set off against pre-operative expenses.

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5.2 It is clear upon a perusal of the facts as found by the authorities below that the funds in the form of share capital were infused for a specific purpose of acquiring land and the development of infrastructure. Therefore, the interest earned on funds primarily brought for infusion in the business could not have been classified as income from other sources. 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 preoperative expenses. In the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. (supra) it was found by the authorities that the funds available with the assessee in that case were 'surplus' and, therefore, the Supreme Court held that the interest earned on surplus funds would have to be treated as 'income from other sources' . On the other hand in Bokaro Steel Ltd.'s case (supra) where the assessee had earned interest on advance paid to contractors during pre-commencement period was found to be 'inextricably linked' to the setting up of the plant of the assessee and hence was held to be a capital receipt which was permitted to be set off against pre-operative expenses."

12.3. Indian Oil Panipat Power Case has also been cited with approval NTPC Sail Power Company (P.) Ltd. vs. Commissioner of Incometax, [2012] 25 taxmann.com 401 (Delhi); the relevant observations are extracted hereafter.

"9. This Court, in Indian Oil Panipat Power Consortium Ltd. v. ITO [2009] 315 ITR 255/181 Taxman 249 (Delhi) held that where interest on money received as share capital is temporarily placed in fixed deposit awaiting acquisition of land, a claim that such interest is a capital receipt entitled to be set off against pre-operative expenses, is admissible, as the funds received by the assessee company by the joint venture partners are "inextricably linked" with the setting up of the plant and such interest earned cannot be treated as income from other sources. The reasoning in Indian Oil is in line with Bokaro Steel Ltd. Similarly, the Supreme Court in CIT v. Karnataka Power Corpn. [2001] 247 ITR 268/[2000] 112 Taxman 629 (SC) and Bongaigaon v Refinery & Petrochemicals Co. Ltd. v. CIT [2001] 251 ITR 329/119 Taxman 488 (SC) held that such receipts are not income.

10. It is no doubt correct that the proviso to section 36(1)(iii) of the Income Tax Act enacts that any amount of the interest paid towards ("in respect of") capital borrowed for acquisition of an asset or for extension of existing business regardless of its capitalization in the books or otherwise, "for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use" would not qualify as deduction. However, in all these cases, when the interest was received by the assessee towards interest paid for fixed deposits when the borrowed funds could

not be immediately put to use for the purpose for which they were taken, this Court, and indeed the Supreme Court held that if the receipt is "inextricably linked" to the setting up of the project, it would be capital receipt not liable to tax but ultimately be used to reduce the cost of the project. By the same logic, in this case too, the funds invested by the assessee company and the interest earned were inextricably linked with the setting up of the power plant. It may be added that the Tribunal has not found that the deposits made as margin monies were not limited to the construction activity connected to the expansion of the business by way of setting up of a new power generation plant."

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13. Having regard to the aforesaid, we are of the opinion that, since the Tribunal has returned a finding of fact that there was indeed an enquiry carried out by the AO as to the nexus between the funds invested in fixed deposits (on which interest was earned) and the real estate project undertaken by the assessee, no interference is called for by the Court.

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14.5. In the instant cases, it was not as if the funds were surplus and therefore invested in a fixed deposit. The funds were received for the real estate project and while awaiting their deployment, they were invested in a fixed deposit which generated interest. This fits in with the dicta of the Supreme Court in Bokaro Steels Case and of this Court in Indian Oil Panipat Power Case, NTPC Sail Power Case, and Jaypee DSC Ventures Case."

11. Though, Mr. Sanjay Kumar states that the said judgment has not been challenged by the Revenue/appellant before the Supreme Court on the ground of low tax effect, Ms. Jha, contests the submission by stating that out of the two AYs, in AY 2012-13, the tax effect being Rs.3,07,26,903/-, which is more than Rs.2 crores and as per the circular issued by the CBDT is an appealable order, the same having attained finality shall also cover the case of the assessee/respondent in her favour. Hence, the appeal, being without any merit, is liable to be dismissed.

12. Having noted the submissions made by the counsel for the parties, we agree with the submission made by Ms. Jha, particularly, in view of the conclusion drawn by the Co-ordinate Bench of this Court in the aforesaid appeals.

13. Hence, we are of the view that no substantial question of law arises for consideration before this Court. The appeal being without any merit is dismissed against the Revenue/appellant, in favour of the assessee/respondent.