

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 21ST DAY OF JUNE 2018

PRESENT

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MRS.JUSTICE S.SUJATHA

I.T.A. No.690/2017

BETWEEN :

1. THE Pr. COMMISSIONER OF INCOME TAX CIT(A), 5TH FLOOR, BMTC BUILDING, 80 FEET ROAD, KORAMANGALA, BENGALURU-560095
2. THE INCOME TAX OFFICER WARD-1(1)(3), 2ND FLOOR, BMTC BUILDING, 80 FEET ROAD, KORAMANGALA, BENGALURU-560095 ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s BANK NOTE PAPER MILL INDIA PVT. LTD., I FLOOR, S.R.COMPLEX, No.2, TAVARAKERE MAIN ROAD, SG PALYA, DRC POST, BENGALURU-560029 PAN: AAECB 3245MRESPONDENT

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 17.03.2017 PASSED IN ITA NO.692/BANG/2015, FOR THE ASSESSMENT YEAR 2011-2012, PRAYING TO I.

FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II.ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO.692/BANG/2015 DATED 17.03.2017 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-1(1)(3), BENGALURU & ETC.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY, **Dr. VINEET KOTHARI, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Mr. K.V.Aravind, Adv. for Appellants - Revenue

The Revenue has filed this Appeal u/s. 260-A of the Income Tax Act, 1961 ['Act' for short], purportedly raising certain substantial questions of law against the Order of the learned Income Tax Appellate Tribunal on **17.03.2017** in **I.T.A. No.692/Bang/2015** for Assessment Year 2011-12 in the case of **Income Tax Officer v. Bank Note Paper Mill India Pvt. Ltd.,**

2. By the impugned Order, the learned Tribunal following the decision of the Hon'ble Supreme Court in the case of '**Commissioner of Income Tax Bihar – II, Patna Vs. Bokaro Steel Limited**' [236 ITR

315], which distinguished the earlier view of the Hon'ble Supreme Court in the case of **'Tuticorin Alkali Chemicals & Fertilizers Vs. Commissioner of Income Tax'** [(1997) 227 ITR 172] and held that the **interest income** earned by the Assessee-Company on bank deposits made out of share capital received by it from the Reserve Bank of India could not be taxed as "Income from Other Sources" as the said interest income was earned prior to commencement of operations of the company during the construction period.

3. The learned Tribunal also referred and relied upon the Judgments of this Court in the case of **'Commissioner of Income Tax v. Karnataka Power Corporation'** [247 ITR 268] and **'Commissioner of Income Tax v. Karnataka Urban Infrastructure and Development and Finance Corporation'** [284 ITR 582] and held that such **interest income** would go to reduce the capital cost of the project and is on the capital

account and the same cannot be taxed during the relevant year in which such interest income is earned.

4. The relevant portion of the impugned Order of the learned Tribunal in favour of Assessee is quoted below for ready reference:

“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 v. 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."

5. Learned Counsel for the Revenue, Mr. K.V. Aravind has fairly submitted that in the recent decision rendered by the Hon'ble Supreme Court on

24.04.2018 in the case of '**Commissioner of Income Tax-IV, Ahmedabad v. Shree Rama Multi Tech Ltd.,**' [(2018) 92 taxmann.com 363 (SC)], the Hon'ble Supreme Court has again reiterated a similar position and held that such interest earned before the commencement of business operations is not liable to be taxed and is eligible for deduction against the public issue expenses incurred by the Company. The relevant portion of Paragraphs 12 and 13 of the said Judgment are quoted below for ready reference:

*"12) The common rationale that is followed in all these judgment is that if there is any surplus money which is lying idle and it has been deposited in the bank for the purpose of earning interest then it is liable to be taxed as income from other sources but if the income accrued is merely incidental and not the prime purpose of doing the act in question **which resulted into accrual of some additional income then the income is not liable to be assessed and is eligible to be claimed as deduction.** Putting the above rationale in terms of the present case, if the share application money that is received is*

deposited in the bank in light of the statutory mandatory requirement then the accrued interest is not liable to be taxed and is eligible for deduction against the public issue expenses. The issue of share relates to capital structure of the company and hence expenses incurred in connection with the issue of shares are to be capitalized because the purpose of such deposit is not to make some additional income but to comply with the statutory requirement, and interest accrued on such deposit is merely incidental. In the present case, the Respondent was statutorily required to keep the share application money in the bank till the allotment of shares was complete. In that sense, we are of the view that the High Court was right in holding that the interest accrued to such deposit of money in the bank is liable to be setoff against the public issue expenses that the company has incurred as the interest earned was inextricably linked with requirement of the company to raise share capital and was thus adjustable towards the expenditure involved for the share issue.

13) In view of the forgoing discussion, we are of the view that the High Court was right in upholding the decision of the Tribunal dated

*21.10.2011 that the **interest income earned out of the share application money is liable to be set off against the public issue expenses.** The judgment passed by the Division Bench of the High Court in remanding the matter to the Tribunal on other issues requires no interference.”*

6. In view of the said legal position with regard to aforesaid issue, we are satisfied that no substantial question of law arises in the present case and the Appeal filed by the Revenue is without merit and liable to be dismissed.

7. The Appeal is accordingly dismissed.

8. We express our concern and anguish at the tendency of the Revenue Department to file unnecessary appeals u/s. 260-A of the Act even though the issues are *ex facie* covered by the decision of the jurisdictional High Courts or even the Hon'ble Supreme Court of India. The substantial question of law essentially means that a question of law which is not already settled by

the Constitutional Courts can only fall within the ambit of Section 260-A of the Act and therefore repetitive filing of such appeals by the Tax Department who are expected to be serious and bonafide litigants in the Constitutional Courts is a matter of concern. It is expected of the concerned Authorities who approve filing of such appeals u/s. 260-A of the Act, to bonafide apply their mind to such aspects of the matter and only after recording appropriate reasons for need to file such appeals and need to get substantial question of law genuinely arising from the Order of the Tribunal determined by Constitutional Courts, that they should approve the filing of such appeals and the High Court u/s. 260-A of the Act. But, the present Appeal filed by the Revenue is certainly not one of that kind and therefore we record our note of caution for the Revenue Authorities concerned in this regard.

11/11

Copy of this Order shall be sent to the Respondent-Assessee, as well as to the Chief Commissioner and Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, New Delhi, for aforesaid needful action.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AN/-