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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 70/2022

PRINCIPAL COMMISSIONER OF INCOME TAX, -7 Appellant
Through Ms.Vibhooti Malhotra, senior
standing counsel for the Revenue with
Mr.Shailendra Singh and Mr.Udit
Sharma, Advocates.

versus

M/S TRIUMPH REALTY PVT. LTD. Respondent
Through Mr.Ajay Vohra, Sr.Advocate with
Ms.Kavita Jha and Mr.Himanshu
Aggarwal, Advocates.

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Date of Decision: 31st March, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present appeal has been filed challenging the order dated 29th November, 2019 passed by Income Tax Appellate Tribunal (hereinafter referred to as 'the ITAT') in ITA No. 6597/Del./2016 for the Assessment Year 2012-13.
2. Learned counsel for the Appellant submits that the ITAT has erred in allowing the capitalisation of interest on FDRs earned during the period of



construction without appreciating the fact that while utilizing the ECB funds the assessee did not follow RBI guidelines. She also submits that the ITAT has failed to consider the various decisions of the Apex Court including ***Tuticorin Alkali Chemicals and Fertilizers Limited vs CIT, (1997) 227 ITR 172 (SC)***.

3. The admitted facts of the present case are that the assessee had taken Foreign ECB loan of Rs.82.37 crores for the purpose of acquisition of a capital asset i.e. renovation and refurbishment of hotel acquired by the assessee under SARFEASI Act. The entire ECB loan was disbursed in a single trench in the year under consideration and during this year, the assessee could utilise only Rs.33.70 crores. Therefore, the assessee had temporarily parked the ECB loan in FDRs till utilisation for fixed asset/capital expenditure strictly in compliance with RBI instructions. The assessee had paid interest of Rs.13.38 crores and has earned interest on FDRs of Rs.4.03 crores. The net amount of interest of Rs.9.35 crores has been added to the preoperative expenditure pending capitalization.

4. The judgment passed in ***Tuticorin Alkali Chemicals*** (supra) referred to and relied upon by learned standing counsel for the Appellant has been considered and explained subsequently by the Apex Court in ***Commissioner of Income Tax, Bihar II, Patna vs. Bokaro Steel Ltd., Bokaro, (1999) 1 SCC 645***, wherein it has been held “.....if the assessee receives any amounts which are inextricably linked with the process of setting up its plant and machinery, such receipts will go to reduce the cost of its assets. These are receipts of a capital nature and cannot be taxed as income.”

5. Subsequently, a Division Bench of this Court in ***Indian Oil Panipat Power Consortium Limited, New Delhi vs. Income Tax Officer, (2009) 315***



ITR 255 (Delhi) has held “.....In view of the discussion above, in our opinion the Tribunal misdirected itself in applying the decision of the Supreme Court in *Tuticorin Alkali Chemicals (supra)* in the facts of the present case. In our opinion on account of the finding of fact returned by the CIT(A) that the funds infused in the assessee by the joint venture partner were inextricably linked with the setting up of the plant, the interest earned by the assessee could not be treated as income from other sources. In the result we answer the question as framed in favour of the assessee and against the Revenue.....”

6. The aforesaid principle has also been reiterated by this Court in *Principal Commissioner of Income Tax vs. Facor Power Ltd., (2016) 380 ITR 474 (Delhi)*.

7. Keeping in view the aforesaid, this Court is of the opinion that no substantial question of law arises for consideration as the questions sought to be raised in the present appeal are squarely covered by the decisions of the Apex Court as well as this Court. Accordingly, the present appeal is dismissed.

MANMOHAN, J

DINESH KUMAR SHARMA, J

MARCH 31, 2022
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