



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.423/CTK/2019

Assessment Year : 2015-16

DCIT, Corporate Circle-1(2), Bhubaneswar.	Vs.	M/s. POSCO India Pvt Ltd., Ground Floor, Fortune Towers, Zone-6, Chandrasekharpur, Bhubaneswar.
PAN/GIR No.AADCP 6735 B		
(Appellant)	..	(Respondent)

C.O.No.09/CTK/2020

(in ITA No.423/CTK/2019)

Assessment Year : 2015-16

M/s. POSCO India Pvt Ltd., Ground Floor, Fortune Towers, Zone-6, Chandrasekharpur, Bhubaneswar.	Vs.	DCIT, Corporate Circle-1(2), Bhubaneswar
PAN/GIR No.AADCP 6735 B		
(Appellant)	..	(Respondent)

Assessee by : Shri B.K.Mahapatra/Shri A.K.Sabat, ARs
Revenue by : Shri M.K.Gautam, CIT (DR)

Date of Hearing : 21/6/ 2022

Date of Pronouncement : 21/6/2022

ORDER

Per Bench

This is an appeal filed by the revenue against the order of the CIT(A)-1 Bhubaneswar dated 11.9.2019 in Appeal no.0163/16-17 for the assessment year 2015-16

2. The cross objection is filed by the assessee in the revenue's appeal in support of the order of the Id CIT(A).
3. Shri M.K.Gautam, Id CIT DR appeared on behalf of the revenue and S/Shri B.K.Mahapatra & A.K.Sabat, Id ARs appeared on behalf of the assessee.
4. Id CIT DR has filed a written submission as follows:

"This is a Departmental appeal against the appellate order dated 11.09.2019 u/s. 250 of the Income Tax Act passed by CIT(A)-1, Bhubaneswar. The solitary issue in this appeal relates to taxation of interest income of Rs.32.95 crores earned on FDs and dividend income earned on Mutual funds during setting up business. This income has been set-off against the revenue expenses incurred during the year and the balance amount has been capitalized,

ii.) *In* this case, the AR of the assessee had relied upon the decisions rendered in the case of Indian Oil Panipat Power Consortium Ltd. vs. ITO (315 ITR Delhi High Court) and NTPC SAIL Power Company Ltd. vs. CLT (Delhi High Court judgement dated 17.07.2012 during the course of assessment proceedings. However the A.O. made an addition to the returned income on the ground that there was no link between the processes of setting up the business and the monies parked *in* FDs and Mutual funds. On appeal, the CIT(A) allowed the relief to the assessee on the ground that the matter stood covered in the favour of the assessee as per decision of Hon'ble Cuttack LTAT in assessee's own case for AY 2014-15 in ITA No.64/CTK/2017 dated 31.07.2018. iii.) Most respectfully following the decision of Hon'ble Cuttack ITAT for the earlier year, it is submitted that the assessee company was incorporated in 2005 for setting up Integrated Steel Plant. Though it has been contended that during the process of

setting up, share capital received had been invested in FDS and Mutual funds yet the fact remains that till date (August,2020), no efforts have been made by the assessee company to acquire lands or to construct buildings or place orders for purchase of machineries. There is no evidence on the record to that effect. One does not know as what business is being set up and there is not even, a remote possibility of commencement of business. In these facts & circumstances, the nexus between setting up said business with the surplus monies parked in the banks and mutual funds has remained unexplained. There is no material on record to suggest that the interest earned from the fixed deposits and dividend earned from mutual funds was inseparably connected with the business activity of the assessee or it was commercially utilized prior to the commencement of the business. The assessee company has not made out the case that the deposits were kept with banks or funds were invested in Mutual Funds for setting up of a factory.

iii.) Investing monies in the mutual funds or FDS is neither the business of the assessee company nor incidental to its main business. It was held by the Hon'ble Supreme Court in the case of **Tuticorin Alkali Chemicals & Fertilizers Ltd.** (227 ITR 172) that it is totally immaterial whether the funds were raised by the issue of share or debentures. If the money lying idle is put into FDs, then interest income so earned would be revenue in nature chargeable to Tax. iv.) **In the case of Maharashtra Airport Development Co. Ltd. Vs. DOT** (35 taxmann.com 591), the Honourable Mumbai LIAT deciding the impugned issue relating to the commencement of the said business, held that focus was on if the assessee undertook any activities related to the development of said infrastructure. In this regard, it was analyzed that the said activities i.e. the acquisition of 1479 hectares of land and appointment of various consultants for other purposes etc. were undertaken in the relevant year. It was an admitted fact that feasibility reports both financial and economic viability were not yet obtained, preparation of development plans was not yet complete, mandatory Environmental Impact Study under Environment Protection Act, 1986 was not yet complete and 100MW-captive power plant was also at preliminary stages. Thus the assessee had not completed the stages which were considered elementary to start the business. What if the mandatory environmental clearance and feasibility-reports were negative and against the set up of the business? Regarding the acquisition of land of 1492 hectares, it was found that same was identified by the Government and role of the assessee appeared to be very nominal. Therefore, the activity of acquiring the said land could not be

attributed to the activities of the assessee. Therefore, on the admitted fact that the assessee was yet to obtain the environmental clearance under the Environment Protection Act, yet to obtain the favourable feasibility reports-financial and technical fronts, yet to obtain the approved plans of development, it was opined that the business of the development of airport infrastructure could not be declared 'set up' in relevant assessment year under consideration. What had happened in this year in substance was mere appointment of sonic consultants for various other purposes, which constituted stages prior to the set up' of the business of the assessee. Therefore the conclusions of the Commissioner (Appeals) that the main business was not commenced in the year under consideration did not call for any interference. The assessee had raised loans and advances for the (purpose of development of infrastructure. **But, due to delay in utilization of funds, fixed deposits were made out of the said funds.** The assessee claimed that the interest income earned from such funds was its business income. However the Assessing Officer held that the interest income in respect of surplus funds, not required for business immediately and deposited in bank for short period was to be assessed as "income from other sources". **The Honourable Mumbai 1TAT held** that it had been found that the funds kept with the Banks as the -D were undisputedly for temporary period of non-utilization for business purposes. In that sense of the matter, the said funds were not in use for 'business purposes. 'The purpose of parking such funds in the bank was obviously for safety and security and ready use of the funds as and when there arose business needs of the assessee. Thus, the earning of interest income could not be dominant or business intention of the assessee. **In this regard, the judgment relied upon by assessee in the case of Indian Oil Panipat Power Consortium Ltd. Vs. ITO (315 ITR 255) (Delhi) which dealt with the interest receipts earned prior to the commencement of business, was held to be distinguishable on facts since it was not known if the interest receipts were earned prior to 'set up' too. v.) The judgment of the Hon'ble Mumbai High Court in the case of Shree Krishna Polyester Ltd. Vs.. CIT (274 ITR 21) is relied upon wherein it was held the income earned by the assessee by investing surplus money in bank deposits for a short period was assessable under the head 'Income from other sources'.**

vi.) **In the case of Whistling Woods International Ltd. Vs. ITO (16 taxmann.com 242),** the assessee-company was incorporated to establish research and training institute-cum-integrated studio for

training people in film line. During relevant assessment year, the project was under construction and there were no allied activities. the assessee, however had received interest on loans given to various other companies as well as short term deposits with banks out of surplus fund received from share capital. The assessee reduced such interest income from the cost of project. The Assessing Officer, however, held that since assessee was in the process of setting up of training institute during the year, interest earned on deploying surplus funds was income to be assessed under the head 'Income from other sources'. On appeal, the Commissioner (Appeals) confirmed the Assessing Officer's views relying upon the decision of Tuticorin Alkali Chemicals & Fertilisers Ltd. Vs. **CIT** [1997] 93 Taxman 502 (SC). However, he agreed with the submission of the assessee that in case any expenditure had been incurred for the purpose of earning interest income, then the Assessing Officer should examine the same and allow the same. On appeal, the Honourable Mumbai ITAT held that except under the head 'profits and gains of business, then such income had to charge to tax under that particular head. In the instant case, the assessee was still constructing the building for the institute which was to be established for training of people. During this phase, the assessee had raised share capital and funds raised from such share capital had been invested in FDRs of the banks as well as deposits with various companies and assessee had earned interest on the same. The same had to be taxed as 'income from other sources' in the light of the decision of the Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. Vs. CIT (supra). It was clear that unless and until the machinery of project was fully installed and the project became operational and the order was executed, it could not be said that the business had been set up. In view of the fact that the assessee was in the process of setting up an institute for training of people in film line but the building for such training institute was under construction during the year and not even a single student was taken up for the training purposes, it was clear that business was not set up and there was no question of claiming any expenditure. It was also contended that in any case, expenditure incurred, which was on revenue account, should have been adjusted against the interest income. Such expenditure could not be allowed as business expenditure because the business had not commenced. However, if any expenditure was incurred for earning interest income, it could have been allowed under section 5? In the result, assessee's appeals were dismissed.

vii.) In the ease of **CIT Vs. Bokaro Steel Ltd.** (236 ITR 315), the assessee-company was in the business of manufacturing of steel. For the purpose of construction of the plant, the assessee **company** gave advances **to its contractors and earned interest from such advances, which were adjusted against the charges payable to the contractors,** thus utilizing the interest amount to reduce the cost of construction. The assessee company was in process of constructing and erecting its plant; the company was charging rent from its contractor for workers and staff employed by contractor for the construction work of company, further, there were hire charges for plant and machinery given to contractors for use in construction work of the company. Similarly, there were interest income from advances made to contractors and royalty from excavation. The earlier three receipts were adjusted against charges payable to contractor and had gone to reduce, the cost of construction. Based on these facts, the Hon'ble Supreme Court held that these receipts were directly connected with or were incidental to the work of construction of its plant undertaken by the company. This was to facilitate the work of construction. Had this facility not been provided by the assessee company, then the contractors would have made their own arrangements and it would have been reflected in the charge on the contractor for the construction work. Thus, the Hon'ble Supreme Court gave the finding that the three receipts being intrinsically connectet with construction of assesses's plant were capital receipts and not income of company from any independent source. Similar was the finding by the Hon'ble High Court of Delhi in the case of Indian Oil Panipat Consortium Ltd. (supra). The facts in the present case are totally different from that in the case of Bokaro Steel Ltd. (supra) or Indian Oil Panipat Consortium Ltd. (supra). Here no advances have been given to the contractors. In other words, the interest receipts have not been utilized towards creation of capital assets. In these facts & circumstances, it is prayed that the interest income/dividend income ought to be charged as "income from other sources".

viii.) **Reliance is also placed on the decision of Hon'ble Delhi High Court in the case of International Marketing Ltd. vs. ITO** (292 ITR 504) wherein it was held in para-2, 3 and 4 as under:

" There is, in our opinion, no error of law in that view, keeping in view the pronouncements of the Supreme Court on the subject. The decision of the Apex Court in **CIT v. Autokast Ltd. [2001] 248 ITR 110** was a case where the assessee had borrowed money for purchase of plant and machinery from the Industrial Development

Bank of India. The amount so borrowed was, however, invested in short-term deposits in the banks and used for discounting of bills until payment was made to the supplier of the plant and machinery. The question was whether interest earned on these deposits was taxable in the hands of the assessee as income from other sources. Relying upon the decision of the Supreme Court in Tuticorin Alkali Chemicals & Fertilizers' case (supra), the Court held that interest income earned by the assessee out of such short-term investment of money was income from other sources, no matter the amount invested had been borrowed by the assessee for purchase of plant and machinery.

3. To the same effect is the decision of **the Supreme Court in CIT v. Dr. V. P. Gopinathan [2001] 248 ITR 449**. The assessee had in that case invested money in a fixed deposit and earned interest on the same. It had also borrowed a loan and paid interest on the same. The question was whether interest earned by the assessee could be diminished by setting of interest paid by the assessee on the amount borrowed. Repelling the contention that it could be so diminished, the Court held that there was no provision under which interest earned by the assessee on fixed deposit could be diminished by interest paid by the assessee on loans that it may have borrowed.

4. We have in the light of the above authoritative pronouncements, no difficulty in holding that the view taken by the Assessing Officer, the CIT and the Tribunal that interest earned by the assessee in the instant case on surplus funds parked with different companies was taxable as income from other sources".

In view of above facts, the order of the A.O. may kindly be restored."

5. Ld CIT DR has placed reliance on the decision of Co-ordinate Bench of Mumbai Tribunal in the case of Whistling Woods International Ltd vs ITO (2011) 16 taxmann.com 242 (Mum) as also the decision in the case of Maharashtra Airport Development Co Ltd. Vs DCIT (2013) 35 taxmann.com 591 (Mum) and the decision of the Hon'ble Delhi High Court in the case of International Marketing Ltd vs ITO (2007) 159 TAXMAN 24 (Del) to support his submission that the assessee has used borrowed funds and parked the

surplus funds thereof in Mutual Funds and fixed deposits and earned interest, which is liable to be assessed under the head " income from other sources" and not income from "business income". Ld CIT DR's primary argument was that the nexus of earning the interest income with the business activities of the assessee has remained unproved and investing the monies in FDRs and Mutual Funds is not the business of the assessee nor is it incidental to the main business. It was the submission of Id CIT DR that till date, the assessee has only purchased some land. No plant and machinery has been installed. No advance to the contractor has been made and there is remote possibility of commencement of business. It was the submission that the order of the AO was liable to be restored.

6. In reply, Id AR submitted that the issue is squarely covered by the various decisions of the Co-ordinate Bench of Cuttack ITAT in assessee's own case right from assessment years 2008-09 to 2014-15. He has filed a chart as follows:

CHART									
Issue: Deletion of Addition of Interest from Bank as income under "Other Sources"									
Impugned CIT(A) order dt.11.09.2019- Paras 3-3.1 (Page Nos. 3&4) at Para 3.1 < />». 4)- Asst							. Order	Nos. 2 to 5)	
							Para 3		
							(Page		
Issue is covered against Department and in favour of assessee by Hon'ble ITAT, Cuttack Bench, Cuttack with									
details and reference as given below:									
SI No.	REMARKS	Refer; Orders of ITAT . CIT(Appeals) & AO							
			Order Dated	Asst. Year(s)	Para Nos.	Page (of Paper Book Volume II)	at Para Nos. (of Paper Book Volume II)	ITA No(s) & CO Nos.	
-1	_2	-3	A	-5	-6	-7	-8	-9	

1	Ref: ITAT ORDERS (In assessee's own ease. ITAT Cuttack Bench, Cuttack Orders:							
1.		Dept. Appeal dismissed	31-Jul-18	2014-15	3-8	325-331	8 (326 -331)	64/CTK/2017&CONo. 26/CTK/2018
2.		Dept. Appeal dismissed	27-Jul-18	2011-12 & 2013-14	3- 10	368 - 374	10(370-374)	403 & 344/ CTK. 2017 & CO Nos. 19&20/CTK/2018
3.		Dept. Appeal dismissed	15-Feb-18	2010-11 & 2012-13	3-8	334 - 340	7-8 (335-340)	155&122 CTK. 2017& CO Nos. 07 & OS CTK. 2017
4.		Dept. Appeal dismissed	27-Jun-14	2009-10	2-4	376 - 382	2.3-4 (378-382)	401/CTK/2013&CONO. 66 CTK/2013

7. Ld AR has also placed before us a copy of the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case for the assessment year 2014-15(supra), wherein, the Co-ordinate Bench following the decisions of earlier years held as follows:

"8. We have considered the written submission of Id. AR of the assessee and the submissions of Id. DR and perused the orders of lower authorities and materials available on record. At the outset we found that the this disputed issue has already been decided by the Tribunal in assessee's own case for the assessment years 2011-12 & 2013-14 in ITA Nos.155&122/CTK/2017, order dated 15.02.2018, wherein the Tribunal has observed as under :-

"7. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. The only dispute agitated by the revenue in these appeals is with respect to interest on fixed deposits on money received in respect of share capital. The contention of Id D.R. is that the interest income is a part of the share capital and it is in the nature of trade operative business activity and, therefore, the income has to be taxed under the head "income from other sources". However, Id D.R. on this disputed issue conceded that the issue is covered by the decision of the Tribunal in assessee's own case for the assessment years 2006-07 to 2008-09 (supra). We find that the coordinate of this Tribunal while considering this issue has held as under: "We have heard the rival parties and perused the material available on record. On our careful consideration of the facts and circumstances of case as brought on record by the authorities

below, we are inclined to find the contention of the learned Counsel of the assessee appropriate to the extent that it was never a change of stance on the facts remaining the same beginning from Assessment Year 2006-07. It was a misconstruction of the facts for the purpose of finding applicability of the provisions of law enunciated by the Hon'ble Apex Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd v. CIT (supra). The law enunciated in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd v. CIT(supra) cannot alone be considered as favoring Revenue insofar as it also talks about capitalization of the interest and the circumstances, which circumstances have been dealt with by the Hon'ble Delhi High Court in the case of Indian Oil Panipat Power Consortium Ltd v. ITO (supra) and further more in the case of NTPC Sail Power Company Pvt. Ltd., v.CIT decided on 17.07.2012 in ITA No.1238/2011 (copy placed on record) which has also been relied on by the learned Counsel of the assessee. The learned Counsel of the assessee has submitted the financial statements duly audited under the provisions of the I.T Act as well as under the Companies Act which have been verified by the Assessing Officer requiring no reference to be made to the Transfer Pricing Officer under the provisions of Section 92CA. In other words, no business income has been generated by the assessee. The expenditure claimed therefore was only for the purpose of setting up the project envisaged and there is no method for balancing interest, if any, passed on to the share holders on account of dividend or business income by the assessee. The test, therefore, to our mind is whether the activity which is taken up for setting up of the business and the funds which are garnered are inextricably connected to the setting up of the plant. The clue is perhaps available in section 3 of the Act which states that for newly set up business the previous year shall be the period beginning with the date of setting up of the business. Therefore, as per the provision of Section 4 of the Act which is the charging section income which arises to an assessee from the date of setting of the business but prior to Commencement is chargeable to tax depending on whether it is of a revenue nature or capital receipt. The income of a newly set up business, post the date of its setting up can be taxed if it is of a revenue nature under any of the heads provided under section 14 in Chapter IV of the Act. For an income to be classified as income under the head "Profits and gains of business or profession" it would have to be an activity which is in some manner or form connected with business. The word "business" is of wide import which would also include all such activities which coalesce into setting up of the business. Once it is held that the assessee's income is an income connected with business, which would be so in the

present case, in view of the finding of fact by the Commissioner of Income-tax (Appeals) that the monies which were inducted into the joint venture by the Koreans were primarily infused to purchase land and to develop infrastructure then it cannot be held that the income derived by parking the funds temporarily with Bank, will result in the character of the funds being changed, inasmuch as, the interest earned from the bank would have a huge different than that of business and be brought to tax under the head " Income from other sources". It is well-settled that an income received by the assessee can be taxed under the head "Income from other sources" only if it does not fall under any other head of income as provided in section 14 of the Act. The head "Income from other sources" is a residuary head of income. In the instant case, it was 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 pre-operative expenses. We are inclined to find a meaning to the insertion of the proviso to Section 36(l)(iii) that interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession was being allowed as deduction u/s.36(l)(iii) of the Act as revenue expenditure was amended w.e.f. 1.4.2004 when the amount of interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession whether capitalized in the books of account or not 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, shall not be allowed as deduction, holds true for the income insofar as once having identified that the income from interest is from the Banks where the share capital was parked was to not earn interest to be balanced interest on capital borrowed when the assessee's own funds were being utilised for the purpose of incurring the project cost which took undue delay due to Government and other interference. In the case of Tuticorin Alkali Chemicals & Fertilizers Ltd v. CIT (supra), Hon'ble Apex Court has held - "if the company, even before it commences business, invests the surplus funds in its hands for purchase of land or house property and later sells it at profit, the gain made by the company will be assessable under the head 'Capital gains'. Similarly, if a company purchases a rented house and gets rent, such rent will be assessable to tax under section 22 as income from house property. Likewise, a company may

have income from other sources.....The company may also, as in that case, keep the surplus funds in short-term deposits in order to earn interest. Such interest will be chargeable under section 56 of the Income-tax Act". Subsequently Hon'ble Apex Court in the case of CIT v. Bokaro Steel Ltd (supra) held - "However, while interest earned by investing borrowed capital in short-term deposits is an independent source of income not connected with the construction activities or business activities of the assessee, the same cannot be said in the present case where the utilisation of various assets of the company and the payments received for such utilisation are directly linked with the activity of setting up the steel plant of the assessee. These receipts are inextricably linked with the setting up of the capital structure of the assessee company. They must, therefore, be viewed as capital receipts going to reduce the cost of construction." Merits for consideration as brought on record for the AYs in appeal before us are as under :

Particulars	As on 31.3.2006	As on 31.3.07	As on 31.3.08
1. Share Capital	22500.00	22500.00	22500.00
2. Land(CWIP)	307.00	664.74	1440.85
3. Bank Deposit	19190.00	1289.00	-
4. Int. from bank	637.44	1,04.17	432.67
5. Pre-operative exp.	629.76	3736.28	5280.69

The returns filed by the assessee for the AYs 2006-07 and 2007-08 clearly indicate that the assessee at no point of time was having income from other sources irrespective of the accounting of the income having been capitalized when the claim of expenditure of 10% was purely on estimation when apparently it was not the business of the assessee to earn income but parking of its funds when the interest income sought to be considered exempt for computing expenditure under the provisions of Section 14A for the purpose of I.T.Act. The learned Counsel of the assessee, therefore, has clarified that the assessee cannot be subjected to taxation in the impugned Assessment Year on the interest income capitalized and at the same time allow amortization thereof in the hope that project will

see the light of the day in the years to come when the I.T. Department will allow less deduction than otherwise claimed will be multiplication of assessments for no fault of the assessee appellant. We are therefore inclined to hold that the learned Counsel of the assessee has submitted a bulk Paper Book which inter alia correlates to earning of interest on the amounts deposited in the Banks to be utilised for the purpose of business of the assessee as per the project envisaged and as per the project approved by the Government of Orissa but taken time due to reason beyond the assessee's control insofar as sanction and authorization have taken its toll when the fact finding is whether capitalization by reducing the expenses could be isolated for the purpose of taxation as income from other sources following the case laws annunciated by Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd v. CIT (supra) when again Hon'ble Apex Court have clarified the stand in the case of CIT v. Bokaro Steel Ltd (supra) was whether the business of the assessee was to claim the expenditure incurred for earning of such interest having been adjusted against the other expenses incurred rather leans in favour of the assessee to the extent that the interest was inextricably linked to the expenditures incurred which project cost did not require further approval but was taking time which time earned interest to the assessee when recording expenditure have been claimed from the interest earned for consideration of 10% thereof was not to be disturbed at all. In this view of the matter, we are of the considered view that for the Assessment Year 2008-09 the interest cannot be taxed as income from other sources in the hands of the assessee and therefore, the subsequent disallowance of expenses claimed at 10% to earn that income has been infused in the total project cost cannot be disallowed insofar as the whole of the income has been capitalized was rightly considered for revision by the assessee before the Assessing Officer filing NIL return. The appeal for the Assessment Year 2008-09, therefore, is allowed on the basis of facts and figures brought on record by the Assessing Officer as well as the learned CIT(A) and as mentioned above. However in view of the principles laid out above, we are inclined to restore the issue to the file of the Assessing Officer for the Assessment 2006-07 and 2007-08 to consider the case of the assessee de novo on establishing the fact that the interest has been earned on the parking of share generated as was considered by the Hon'ble Apex Court insofar as the earning of interest has been capitalized by reducing the project cost to be amortized has to be considered as a nullity after verification. Needless to say, an opportunity of being heard to the assessee be granted to establish the fact as have been narrated before us in the light of Assessment Year 2008-09 when it is not a

change of stance as contested by the learned DR but on the same set of facts the interest portion cannot be isolated for the purpose of taxation.

6. In the result, the appeal for the Assessment Year 2008-09 is allowed and the learned Assessing Officer is directed to accept the NIL revised return and the appeals for the AYs 2006-07 and 2007-08 are restored to the file of the Assessing Officer for consideration afresh in the light of our decision for the assessment year 2008-09 above. The same are considered to be allowed for statistical purposes.”

8. We, considering the apparent facts on record and following the judicial precedent are of the opinion that the interest on fixed deposits are not taxable under income from other sources and, accordingly, we uphold the findings of the CIT(A) and dismiss the ground of appeal taken by the revenue for both the assessment years.”

Recently, the Tribunal in assessee’s own case for the assessment year 2011-2012 & 2013-2014 in ITA No.403&344/CTK/2017, vide order dated 27.07.2018 has decided the issue against the Revenue. Respectfully following the judicial precedence we uphold the findings of CIT(A) and ITA No.64/CTK/2018 And CO No.26/CTK/2018 POSCO India Limited 8 dismiss the grounds raised by the Revenue. Accordingly, appeal of the Revenue is dismissed. ”

8. It was the submission that the assessment orders for the assessment years 2011-12 to 2014-15 are verbatim except in the change of figures. It was the submission that funds were not borrowed funds. There was no change in the facts during the relevant assessment years. The project has not been given up nor is that any intention to give up.

9. We have considered the rival submissions. A perusal of the submission filed by the Id CIT DR and case laws referred to by Id CIT DR shows that he is attempting to bring fresh facts which have not been

considered by the Assessing officer nor in the appellate proceedings. It is admitted fact that an order of the Assessing Officer cannot be strengthened in appellate proceedings. It can only be defended. Clearly, the Co-ordinate Bench of this Tribunal as in the assessee's own case for the assessment year's right from A.Y. 2008-09 onwards has held the issue in favour of the assessee. The findings of the Tribunal for the assessment year 2014-15 (supra) have also been extracted(supra). No change in the facts has been shown. This being so, we find no reason to take a view different from that taken from the earlier assessment years. In these circumstances, respectfully following the decision of the Co-ordinate Bench of this Tribunal for the assessment years 2008-09 to 2014-15, the findings of the Id CIT(A) on this issue stand confirmed. It is also noticed that the Id CIT(A) has decided the issue in favour of the assessee by following the judicial discipline in following the decisions of this Co-ordinate Bench in assessee's own case for the earlier assessment years. On this ground also, we find no reason to interfere with the order of the Id CIT(A). Consequently, the appeal of the revenue stands dismissed.

10. As we have dismissed the revenue's appeal and the cross objection filed by the assessee is in support of the Id CIT(A), the same stands dismissed.

11. In the result, appeal filed by the revenue and cross objection filed by the assessee is dismissed.

Order dictated and pronounced in the open court on 21/6/2022.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 21/06/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The assessee : M/s. POSCO India Pvt Ltd.,
Ground Floor, Fortune Towers, Zone-6,
Chandrasekharapur, Bhubaneswar.
2. The Revenue: DCIT, Corporate Circle-1(2),
Bhubaneswar.
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack