

GAHC010137832021



**THE GAUHATI HIGH COURT**  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**Case No. : ITA/15/2022**

PR. COMMISSIONER OF INCOME TAX,  
AAYAKAR BHAWAN,  
M.G ROAD, SHILLONG-793001.

.....***Appellant***

**-Versus-**

M/S BRAHMAPUTRA CRACKER AND POLYMER LIMITED,  
ADMINISTRATION BUILDING, BCPL PROJECT,  
LEPETKATA DIBRUGARH, 786006

.....***Respondent***

**Linked Case : ITA/13/2022**

PR. COMMISSIONER OF INCOME TAX,  
SHILLONG, AAYAKAR BHAWAN,  
MG ROAD, SHILLONG.793001.

.....***Appellant***

**-Versus-**

M/S BRAHMAPUTRA CRACKER AND POLYMER LIMITED,  
ADMINISTRATION BUILDING, BCPL PROJECT,  
LEPETKATA, DIBRUGARH- 786006.

.....***Respondent***

**Linked Case : ITA/16/2022**

PR. COMMISSIONER OF INCOME TAX  
AAYAKAR BHAWAN  
M.G ROAD, SHILLONG 793001

.....***Appellant***

**-Versus-**

M/S BRAHMAPUTRA CRACKER AND POLYMER LIMITED,  
ADMINISTRATION BUILDING, BCPL PROJECT,  
LEPETKATA, DIBRUGARH- 786006.

..... **Respondent**

For the Appellant(s) : Mr. S.C. Keyal, Sr. SC, Income Tax.

For the Respondent(s) : Dr. A. Saraf, Senior Advocate assisted by  
Mr. P. Baruah, Advocate.  
: Mr. S. Mitra, Advocate.

**Date of Hearing : 22.03.2023.**

**Date of Judgment : 12.04.2023.**

**BEFORE**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

**JUDGMENT & ORDER**

*[Sandeep Mehta, CJ]*

These three appeals, namely, ITA No.15/2022, ITA No.13/2022 and ITA No.16/2022, filed under Section 260A of the Income Tax Act, 1961 preferred by the Revenue/Income Tax Department, involve identical question of facts and law and hence, the same are being heard together and decided by this common judgment and order.

**2.** These appeals are directed against the order passed by the Income Tax Appellate Tribunal (in short, ITAT), Guwahati Bench, Guwahati in separate appeals as per the schedule below:

<b>Appeal No.</b>	<b>Order dated</b>	<b>Case No.</b>
<b>ITA No.15 of 2022</b>	<b>22.10.2020</b>	<b>ITA No. 92 (Gau)/2018 &amp; ITA No.92(Gau)/2018 &amp; ITA No.97/Gau/2018 for the Assessment Year 2014-2015.</b>
<b>ITA No.13 of 2022</b>	<b>22.10.2020</b>	<b>ITA No.89/(Gau)/2018 &amp; ITA No.94/Gau/2018 for the Assessment Year 2011-2012.</b>
<b>ITA No.16 of 2022</b>	<b>22.10.2020</b>	<b>ITA No.101/(Gau)/2018 &amp; ITA No.200/(Gau)/2018 for the Assessment Year 2015-2016.</b>

**3.** The common issue involved in all these three appeals is whether the interest earned by the assessee from borrowed funds (short-term/temporary deposits) can be capitalized or not.

In other words, whether these amounts of interest would be liable to be taxed or would be exempted income.

**4.** Mr. S.C. Keyal, learned Senior Standing Counsel, Income Tax Department has proposed the following questions of law seeking admission of these appeals:-

“a. *Whether the Ld. Tribunal is correct in law and facts and circumstances of the case in concluding that the interest income*

*earned from the short term deposits in banks from unutilized capital subsidy be treated as capital receipt and not to be treated as income from other sources?*

- b. *Whether the Ld. Tribunal is correct in law and on facts holding that the interest earned from short term deposits of unutilized borrowed funds was a capital?*
- c. *Whether the Ld. Tribunal is correct in law in holding that letter/clarification from the Ministry of Chemicals & Fertilizers i.e. (MoCF), Government of India can override the provisions of the Income Tax Act, 1961 with regards to treatment of interest from short term deposits in banks?"*

5. In support of his contentions Mr. Keyal has placed reliance on the following judgments of the Hon'ble Supreme Court

- 1. Commissioner of Income Tax, Trivandrum Vs. Autokast Limited, (2002) 9 SCC 607.**
- 2. Bongaigaon Refinery and Petrochemicals Limited Vs. Commissioner of Income Tax, Assam, reported in (2001) 10 SCC 289.**
- 3. Commissioner of Income Tax, Bihar II, Patna Vs. Bokaro Steel Ltd., Bokaro, (1999) 1 SCC 645.**
- 4. The Principal Commissioner of Income Tax Vs. M/s. Bajaj Herbals Pvt. Ltd., reported in 2022 0 Supreme (SC)307.**

6. Dr. A. Saraf, learned Senior counsel assisted by Mr. P. Baruah and Mr. S. Mitra, learned counsel for the respondents urged that no substantial question of law is involved in these appeals and hence the same do not merit admission. It was submitted that the issue regarding the interest on short term deposits made

by the Company from the surplus funds during its formative years being exempted from tax is no longer *res integra* and has been put to rest beyond the pale of doubt by the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax, Bihar II, Patna Vs. Bokaro Steel Limited, Bokaro, (1999) 1 SCC 645***. It was further contended that the ITAT, whilst rejecting the appeals of the Revenue observed that the same view was taken in the case of assessee for the accounting years of 2009-2010, 2010-2011 and the said judgment of the Tribunal not having been challenged any further has attained finality.

**7.** Dr. Saraf submitted that the assessee is a public sector enterprise working under the Ministry of Chemicals & Fertilizers (hereinafter referred to as MoCF) and was promoted to undertake the Assam Gas Cracker Project approved by the Cabinet Committee of Economic Affairs for setting up an Integrated Petro-Chemical Complex at Lepetkata, District Dibrugarh, Assam. The Project had not been set up/made operational during the years under consideration.

The total Project cost was Rs.8,920 crores broken up as below :

<b>Source of Fund</b>	<b>Amount (in Rs. Crores)</b>
<b>Capital Subsidy</b>	<b>4,690</b>
<b>Debt</b>	<b>2,961</b>
<b>Equity</b>	<b>1,269</b>
<b>Total</b>	<b>8,920</b>

**8.** It was contended that the assessee received capital subsidy from the MoCF for setting up the Project. The MoCF specifically prescribed the purposes

and the manner in which the subsidy was to be utilized and the assessee was under an obligation to utilize the capital subsidy as specified by the MoCF. A separate Bank Account was maintained by the assessee for such capital subsidy and any excess amount not being utilized was temporarily parked in short-term deposits in Banks and interest was earned thereupon. These deposits were made in accordance with the guidelines of the Department of Public Enterprises. The unutilized amounts from equity capital and borrowed funds garnered for setting up the project were also parked in short term deposits in Banks and interest income was derived. Clarifications were received from the MoCF on 11.08.2010 and 15.02.2012 indicating that the interest earned from the temporary parking of such capital subsidy shall be treated as part of capital subsidy and it will correspondingly reduce the amount of capital subsidy sought from the Government. The assessee respondent accordingly claimed such interest income as capital receipts i.e. a part of capital subsidy itself.

The interest income earned by the assessee by way of short-term deposits placed with the banks out of unutilized subsidy, unutilized equity and unutilized borrowed funds were added by the AO as revenue receipts under the Head of interest from other sources contrary to law as laid down by the Hon'ble Supreme Court in the case of ***Bokaro Steel Ltd.*** (supra). Reliance was also placed on the judgment of Delhi High Court in the case of ***Principal Commissioner of Income Tax, -7 Vs. Triumph Realty Pvt. Ltd.,*** reported in ***2022 SCC OnLine Del 916***. It was contended that the CIT corrected this aberration in the view of the AO by accepting the appeals of the assessee and the ITAT affirmed the orders of the CIT in the appeals of Revenue by placing reliance on the judgments rendered by the Hon'ble Supreme Court on the issues for consideration.

- 9.** Dr. Saraf thus urged that the appeals do not involve any substantial question of law and hence, the same are liable to be dismissed.
- 10.** We have given our thoughtful consideration to the submissions advanced at Bar and gone through the impugned orders, the materials placed on record and the precedents cited at Bar.
- 11.** There is no quarrel on the factual matrix of the case that the respondent assessee is a public sector undertaking which was assigned the task of setting up the integrated Petrochemical Complex at Lepetkata, District Dibrugarh, Assam. The assessee garnered funds for carrying out the Project through capital subsidy, debt and equity. While the project was underway, the unutilized funds from all the three heads were placed in short-term deposits with the Banks and interest was earned thereupon. The assessee in its return for the relevant years filed before completion of the project, claimed these receipts to be of capital nature exempted from the application of income tax not being revenue receipts. The AO ruled otherwise and held that the income under these heads was in the nature of revenue receipts and was liable to tax. The assessee challenged the assessment orders to the CIT which ruled in favour of the assessee and the Revenue's appeals to the ITAT failed. Thus, two jurisdictional authorities have decided the issue in favour of the assessee by recording concurrent findings.
- 12.** We now advert to the judgments cited by Mr. S.C. Keyal.
- 13.** In the case of ***The Principal Commissioner of Income Tax Vs. M/s. Bajaj Herbals Pvt. Ltd.,*** reported in ***2022 0 Supreme (SC)307***, the High Court dismissed the appeal simply observing that none of the questions proposed by the Revenue could be termed as involving substantial questions of

law and that all the proposed questions were on factual aspects of the matter. However, no reasoning was assigned by the High Court to support this conclusion. Accordingly, the Hon'ble Supreme Court accepted the appeal of the Revenue and reversed the order of High Court. The matter was remanded to the High Court for fresh consideration.

Thus, the said judgment traverses on its own factual territory inasmuch as the High Court did not assign reasons for dismissing the appeal by simply observing that no substantial question of law was involved therein. Thus the Hon'ble Apex Court interfered in the Revenue's appeal and remanded the matter to the High Court for fresh consideration.

**14.** In the case of ***Commissioner of Income Tax, Trivandrum Vs. Autokast Limited*** (supra) referred by Mr. S.C. Keyal, in the peculiar facts and circumstances, Hon'ble Supreme Court did not enter into the factual aspects of the matter and accepted the appeal of Revenue by placing reliance on the judgment rendered in the case of ***Tuticorin Alkali Chemicals Fertilizers Ltd. Vs. CIT*** (supra).

In the case of ***Tuticorin Alkali Chemicals Fertilizers Ltd.*** (supra), the fact situation which prevailed was that the assessee invested borrowed funds prior to commencement of business resulting in earning of interest.

The Hon'ble Supreme Court held that if a person borrows money for business purpose to utilize it for interest, however temporarily, the interest so generated will be income. This income can be utilized by the assessee whichever way he likes. Merely because he utilized it to repay the interest on the loan taken will not make the interest income a capital receipt.

The said judgment is clearly distinguishable in the present set of facts and



circumstances because herein, only the unutilized part of the capital raised for setting up the project was parked by the assessee in short term savings. There was a clear and inextricable link between the interest received on this temporary investment with the setting up of the project. There is no indication in the facts of the present case that the assessee utilized these funds for any purpose other than the development of the infrastructure of the plant to be set up.

**15.** In the case of *Bongaigaon Refinery Petrochemicals Ltd.* (supra) relied upon by Mr. Keyal, the assessee derived income from housing property, its guest house, charges for equipments, etc. and recoveries from contractors on account of water and electricity supply. These sources of income were held as excluded from capital receipts.

In this case, the assessee did not challenge the part of the assessment order wherein, the interest income derived during the formative period was charged to tax after declaring of the same to be revenue receipt.

Thus, the said judgment does not come to aid of Revenue because no adjudication was made by the Hon'ble Supreme Court on the issue of interest from unutilized capital funds.

**16.** However, in the present case, the factual aspect which is not disputed by the Revenue is that the interest income which was sought to be taxed by the Revenue was derived by short-term Bank deposits made from the unutilized funds received by the public sector undertaking by way of capital subsidy/capital funds during the formative years of the project undertaken by it.

A clear guideline was issued from the MoCF that the interest earned from the temporary parking of capital subsidy will be treated to be a part of capital subsidy and it will be correspondingly reduced from the amount of capital

subsidy sought from the Government. Consequently, as held by the Hon'ble Supreme Court in the case of **Bokaro Steel Ltd.** (supra), relied upon by learned counsel for the respondent, interest received from short-term deposits/from the unutilized amounts of capital subsidy, equity, debt and borrowed funds during the formative period when the project was still under construction phase and had not yet been set up was rightly claimed by the respondent assessee as capital receipt and could not have been brought under the purview of revenue receipts.

The ITAT, whilst dismissing the appeals of the Revenue took into account the fact that the assessee's own case for the accounting years 2009-2010 and 2010-2011 was considered in the same manner.

The relevant extracts from the judgment of the Tribunal are extracted hereinbelow for the sake of ready reference.

“.....The Ld. AR drew our attention the fact that all the issues raised by both the parties are covered by the decision of the Tribunal in assessee's own case for AY 2009-10 and 2010-2011 and drew our attention to para 7.5 wherein the Tribunal has allowed the additional ground raised by the assessee in respect of interest on deposit out of equity wherein the Tribunal held as under:

*“7.5. We hold that the aforesaid decisions supra would be squarely applicable in favour of the assessee for adjudication of additional ground raised before us with regard to non-taxability of interest on deposits out of equity portion in the sum of Rs.1,18,85,987/- for the Asst. year 2009-10. It does not matter that the assessee had voluntarily offered the same to tax in its return of income. It is already well settled that there is no estopped against the statute. Reliance in this regard is placed on the decision of the Hon'ble Calcutta High Court in the case of Maynak Poddar (HUF) vs. WTO reported in (2003) 262 ITR 633 (Cal). It is also well settled that the revenue cannot take advantage of ignorance of the provisions of the Act on the part of the assessee and on the contrary, the revenue is expected to educate the assessee and not to deprive the legitimate deductions which is otherwise entitled for the assessee. Hence respectfully*

*following these principles and the judicial precedents relied upon we hold that the interest income on deposits earned in the sum of Rs.1,18,85,987/- for the Asst. Year 2009-10 (raised by way of additional ground) out of equity funds, shall have to be treated only as capital receipt as the same is inextricably linked with the business of the assessee and linked with the capital structure of the assessee company. Hence the ld AO is directed to delete the said addition. Accordingly the Additional Ground raised by the assessee for the Asst. Year 2009-10 is allowed.”*

**17.** Identical controversy was considered and discussed threadbare by the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax, Bihar II, Patna Vs. Bokaro Steel Ltd., Bokaro, reported in (1999) 1 SCC 645*** wherein the Hon'ble Supreme Court also considered the judgment rendered in ***Tuticorin Alkali Chemicals Fertilizers Ltd. Vs. CIT, reported in (1997) 6 SCC 117*** and held as below:

“7. The appellant, however, relied upon the decision of this Court in *Tuticorin Alkali Chemicals and Fertilizers Ltd. v. CIT [(1997) 6 SCC 117]*. That case dealt with the question whether investment of borrowed funds prior to commencement of business, resulting in earning of interest by the assessee would amount to the assessee earning any income. This Court held that if a person borrows money for business purposes, but utilizes that money to earn interest, however temporarily, the interest so generated will be his income. This income can be utilized by the assessee whichever way he likes. Merely because he utilized it to re-pay the interest on the loan taken will not make the interest income as a capital receipt. The department relied upon the observations made in that judgment (at SCC pp. 122-123: ITR p. 179) to the effect that if the company, even before it commences business, invests 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 rented house and gets rent, such rent will be assessable to tax under Section 22 as income from house property. Likewise, the 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. This Court also emphasised the fact that the company was not bound to utilize the interest

*so earned to adjust it against the interest paid on borrowed capital. The company was free to use this income in any manner it liked. 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. In the case of *Challapalli Sugars Ltd. v. CIT*, [(1975) 3 SCC 572] this Court examined the question whether interest paid before the commencement of production by a company on amounts borrowed for the acquisition and installation of plant and machinery would form a part of the actual cost of the asset to the assessee within the meaning of that expression in Section 10(5) of the Indian Income-tax Act, 1922 and whether the assessee will be entitled to depreciation allowances and development rebate with reference to such interest also. The Court held that the accepted accountancy rule for determining 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 of such borrowed money can be capitalised and added to the cost of the fixed assets created as a result of such expenditure. By the same reasoning, 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.*

*[Emphasis supplied]*

**18.** An identical controversy was considered by the Delhi High Court in the case of ***Pr. Commissioner of Income Tax,-7, Vs. Triumph Realty Pvt. Ltd.*** (supra) wherein following the judgment in the case of ***Bokaro Steel Ltd.*** (supra), the Revenue's appeal was dismissed on the ground that no substantial question of law arose for consideration.

**19.** Mr. Keyal, learned Standing Counsel, Income Tax, was not in a position to

dispute that same view was taken by the Tribunal in the case of the respondent assessee for the assessment years 2009-2010 and 2010-2011 and that those orders have attained finality.

**20.** The principle which can be culled out from the above discussion is that when an assessee who is involved in the task of setting up of a project, places the unutilized part of the capital funds in short term bank deposits and earns interest thereupon, the same would be added to the capital funds, and hence it would definitely have an inextricable link with the project cost. Thus, such interest income cannot be considered to be profit earned by the assessee and would definitely have to be treated as capital gains and cannot be clubbed to revenue receipts. Thus, the respondent assessee rightly claimed this amount as exempted income under the head of capital gains.

**21.** In view of the discussion made hereinabove, we are of the firm view that the interest received by the respondent assessee from short term deposits made out of unutilized capital subsidy, unutilized debt funds, unutilized equity funds received as capital during the formative years till the project was completed, was rightly claimed by the assessee under the head of capital receipts. The Revenue's stand that this interest income should be treated as revenue receipts so as to make it taxable income is not acceptable in view of the law as laid down by the Hon'ble Supreme Court in the case of ***Bokaro Steel Ltd. (supra)***.

**22.** Thus, we are of the firm view that no substantial question of law is disclosed from the admitted factual/legal position prevailing on record so as to warrant admission of these appeals.

**23.** Hence, the appeals fail and are dismissed as the same do not involve any substantial question of law.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**