

VNG Automotive P. Ltd. v. Asstt. Commissioner of Income Tax

ITA 795/2004 & ITA 796/2004

ITA 795/2004 & ITA 796/2004 (Del HC, decided 10.04.2026) | 2026-04-10

Interest on pre-commencement bank deposits of funds earmarked for committed plant/machinery and technical know-how obligations is a capital receipt reducing project cost under Bokaro Steel, not 'income from other sources' under Tuticorin Alkali; reopening of section 143(1)(a) intimation valid under Rajesh Jhaveri.

Income-tax Act, 1961: sections 4, 28, 35D, 56, 143(1)(a), 147, 148, 254(1) and 260A

High Court of Delhi | 2-judge bench (Division Bench) | V. Kameswar Rao, J. | Vinod Kumar, J.

Assessment years: 1993-94, 1994-95

Split question answers: Section 147/254(1) jurisdictional question answered for Revenue; substantive merits question answered for Assessee

In paragraph 57 (PDF p. 30), the Division Bench answered Question 1 in favour of the Revenue (holding that processing under section 143(1)(a) involves no formation of opinion under Rajesh Jhaveri and that under section 254(1) the ITAT could examine reopening validity even without a specific ground by the Revenue), but answered Question 2 in favour of the appellant-assessee on merits (holding that the pre-commencement bank interest was inextricably linked to setting up the project under Bokaro Steel), thereby setting aside the ITAT order and allowing both appeals.

01 FACTS OF THE CASE

Incorporated on 24.03.1992 to manufacture ecological asbestos-free brake-shoes, VNG Automotive P. Ltd. entered into a technical know-how agreement on 25.05.1992 with CDB Holding Pte. Ltd., Singapore for USD 2,50,000 (paying USD 50,000 / Rs. 20,27,028 in AY 1993-94 with USD 2,00,000 payable in five annual instalments). Out of Rs. 75.59 lakh raised from Directors (share capital and interest-free loans), the company spent Rs. 23,17,618 (AY 1993-94) and Rs. 20,27,157 (AY 1994-95) on industrial land, know-how fees, imported raw material and machinery advances, and temporarily parked the balance ~Rs. 32 lakh earmarked for committed machinery and know-how payments in bank deposits, earning interest of Rs. 1,33,151 (AY 1993-94) and Rs. 2,37,770 (AY 1994-95), which it set off against pre-operative project expenses. Returns were processed under section 143(1)(a). On 28.03.2001, the AO reopened the assessments under section 148 relying on Tuticorin Alkali, (1997) 227 ITR 172 (SC) and taxed the interest under 'income from other sources'. The CIT(A) annulled the reopening as a change of opinion and also deleted the addition on merits under Bokaro Steel. The ITAT reversed the CIT(A) on both grounds.

Source: [Paragraphs 1-12, 41-51; PDF pp. 1-6, 16-23](#)

02 DISCUSSION BY THE HON'BLE COURT

The Division Bench decided the two framed questions separately: (1) On Question 1 (Reassessment & ITAT power under section 254(1), paras 41-47): Because the original returns were processed only by intimation under section 143(1)(a) without any scrutiny order under section 143(3), the AO had formed no opinion and reopening under section 147/148 was not barred by 'change of opinion' (ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd., (2008) 14 SCC 208). Further, under section 254(1) ('pass such orders thereon as it thinks fit'), the ITAT had wide power to adjudicate the foundational jurisdictional issue of reopening even though the Revenue had not raised a specific ground in its appeal memo (Mahalakshmi Textile Mills, 66 ITR 710 and Fidelity Business Services, 2018 SCC OnLine Kar 756 applied). (2) On Question 2 (Merits of pre-commencement interest, paras 48-56): Unlike Tuticorin Alkali (where idle surplus borrowed funds were invested in short-term deposits to earn independent interest), the funds here were raised from Directors specifically for setting up the manufacturing plant and remained earmarked to discharge committed liabilities for plant/machinery balances and annual USD 40,000 know-how instalments. Following Bokaro Steel Ltd. (236 ITR 315), Karnal Cooperative Sugar Mills (243 ITR 2), Indian Oil Panipat Power (315 ITR 255), NTPC Sail Power, and Brahma Center Development (437 ITR 285), interest on funds inextricably linked to setting up the plant is a capital receipt that reduces project cost / pre-operative expenses (eligible for section 35D amortisation) and cannot be taxed as income from other sources.

Source: [Paragraphs 41-57; PDF pp. 16-30](#)

03 JUDICIAL DECISION

Answering Question 1 in favour of the Revenue and Question 2 in favour of the appellant-assessee, the High Court set aside the common order of the ITAT dated 23.06.2004 and allowed both appeals (ITA 795/2004 and ITA 796/2004).

Source: [Paragraphs 57-58; PDF p. 30](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the assessee (VNG Automotive P. Ltd.) on merits. Both appeals were allowed and the ITAT's order taxing the pre-commencement interest of Rs. 1,33,151 (AY 1993-94) and Rs. 2,37,770 (AY 1994-95) as income from other sources was set aside.

Source: [Paragraphs 57-58; PDF p. 30](#)

05 AKHB REVIEW POINT

AKHB analysis: to place pre-commencement FD interest within the Bokaro Steel / Indian Oil Panipat Power rule rather than Tuticorin Alkali, build a contemporaneous fund-deployment schedule linking the bank deposits to binding capital commitments (such as purchase orders, machinery advances, land acquisition or scheduled technical-know-how instalments) awaiting milestone disbursement.

Source: [AKHB analysis based on paragraphs 48-56 / PDF pp. 20-30](#)

SOURCE & VERIFICATION

[Delhi High Court official digital judgment PDF - AKHB Cloud Repository](#)

Thirty-page official Delhi High Court common judgment PDF in ITA 795-796/2004; paragraphs 1-58 span PDF pages 1-30.

Supplied source-reviewed note retained; original bytes and identity validation checked in this release. Substantive re-review is not claimed for this record.

Open cited source rendition

Full 30-page official Delhi High Court PDF read and verified. Original bytes match SHA-256 d73ecb52705ae2073ebfaf6d9b92cdfbaaa2873eef4c4b0001136a649f1e8556. Note minor figure variant in para 3 printing 'Rs. 1,23,151' whereas paras 4, 9, 48, 50 and 52 record 'Rs. 1,33,151' as per the P&L account.

STATUTORY SCOPE

Applies sections 4, 35D, 56, 143(1)(a), 147, 148 and 254(1) of the Income-tax Act, 1961 for AYs 1993-94 and 1994-95. Income-tax Act, 2025 equivalence is not verified.

LATER TREATMENT

Source checked 2026-10-17. Full judgment checked. Applies CIT v. Bokaro Steel Ltd., (1999) 236 ITR 315 (SC), CIT v. Karnal Cooperative Sugar Mills Ltd., (2000) 243 ITR 2 (SC), ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd., (2008) 14 SCC 208, CIT v. Mahalakshmi Textile Mills Ltd., (1967) 66 ITR 710 (SC), Indian Oil Panipat Power Consortium Ltd. v. ITO, (2009) 315 ITR 255 (Del), NTPC Sail Power Co. (P) Ltd. v. CIT, [2012] 25 taxmann.com 401 (Del), and PCIT v. Brahma Center Development Pvt. Ltd., (2021) 437 ITR 285 (Del) / 2025:DHC:8487-DB, and distinguishes Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT, (1997) 227 ITR 172 (SC). Comprehensive subsequent judicial treatment has not been verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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