IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

I.T. A. No.616 of 2006
DATE OF ORDER: 9.7.2007

Commissioner of Income Tax, Chandigarh-I ... Appellant

Versus

M/s HFCL Infotel Limited, B-71, Phase-VII, Indl, Focal Point, Mohali

...Respondent

CORAM : HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

.*.*.*.

Present: Mr. S.K. Garg Narwana, Advocate, for the appellant-Revenue.

JUDGEMENT

M.M. KUMAR,J

This order shall dispose of ITA Nos. 616 and 617 of 2006 which have been filed by the Revenue under Section 260-A of the Income-tax Act,1961(for brevity "the Act") challenging order dated 14.11.2005, passed by the Income-tax Appellate Tribunal, Chandigarh Bench-A(for brevity "the Tribunal") in ITA Nos. 614 and 615/Chandigarh/2003, in respect of assessment year 1999-2000 and 2000-2001.

The Revenue has claimed the following substantial question of law, which would emerge from the order passed by the Tribunal.

> " Whether the Tribunal in the facts relevant to the case and in law was right in allowing set off of interest income relating to the pre-operative period, earned on the fixed deposits kept for arranging bank guarantees, towards the cost of capital assets."

It has not been disputed that the interest income on the fixed deposit was earned by the assessee-respondent during the pre-operative period of the unit. The FDRs for a sum of Rs. 6.25 crores was furnished by the assessee-respondent as performance guarantee of Rs. 25 crores.

Accordingly, the interest income was not declared by the assessee in his return. The Assessing Officer held the income to be taxable as ' income from other sources'. The business has commenced on 24.7.2000 whereas the interest income was earned in respect of the earlier period.

On appeal filed by the assessee, the Commissioner of Income Tax (Appeals) reversed the view taken by the Assessing Officer by placing reliance on a judgment of this Court in the case of **Karnal Co-operative Sugar Mills Ltd. v. CIT, (1999) 233 ITR 531(P&H),** and a judgment of Hon'ble the Supreme Court in the case of **CIT v. Bokaro Steels Ltd. (1999) 236 ITR 315**.

It is further appropriate to mention that the CIT(A) also referred its earlier decision in the case of assessee himself in respect of assessment year 1998-99, which was a year preceding the assessment year in hand. Accordingly, it was held that this income was not taxable under the head 'income from other sources'.

On further appeal by the Revenue, the Tribunal upheld the view taken by the CIT(A) by observing as under:

> "Undeniably, the interest on the FDRs was earned in the preoperative period. The terms and conditions of the licence awarded to the assessee by Department of Telecommunications have also not been denied. It is, therefore, irrefutable that it was only in pursuance of the terms of the licence that the assessee placed the money in fixed deposits and that too was done by the promoters. The assessee was required to furnish a financial guarantee and a performance guarantee to the Departmentof Telecommunications. This guarantee was arranged from the Bank of Rajasthan, in lieu whereof, a sum of Rs. 6.25 crores was placed as fixed deposits with the bank. Obviously, the said guarantees could not have been given to the assessee by the bank, had such amount not been placed by the assessee in fixed deposits with the bank. The terms deposit thus had, as rightly pointed out

by the Ld. Counsel for the assessee, a direct nexus with the project of the assessee. As held in Bokaro Steels Ltd. (supra), such direct and incidental connection would go to reduce the cost of the project. It has also not been denied that in the present case, the assessee has, in fact, reduced the cost of the project. Moreover, the decision of the Ld. CIT(A), Bhatinda in the case of assessee itself, for assessment year 98-99, has not been said to have been appealed against by the department. In this decision, the Karnal Co-operative Sugar Mills (supra) decision was relied on to hold that the interest earned by the assessee company was incidental to its business and the interest so earned was in the nature of a capital receipt which would go to reduce the cost of the project, since commercial operation of the business had not been started and that such interest income was not taxable as income from other sources."

We have heard learned counsel for the Revenue at a considerable length. On a query put by us, as to why the Revenue has not filed an appeal in the case of assessee itself in respect of the assessment year 1998-99, where the CIT(A) had also taken the same view, learned counsel for the Revenue has not been able to furnish any satisfactory explanation. In fact it is not disputed that similar question was involved in respect to the assessment year 1998-99, wherein the interest income from the FDRs in respect of the pre-operative period was not assessed to tax, therefore, we are of the view that the principles of consistency laid down by Hon'ble the Supreme Court in the cases of **Radha Soami Satsang v. CIT,(1992) 193 ITR 321 and Berger Paints India Ltd. v. CIT (2004) 266 ITR 99,** must be applied to the case in hand. It has to be concluded that no substantial question of law would arise for determination of this Court and the appeals are accordingly dismissed.

(M.M. KUMAR)
JUDGE

July 09, 2007
rajeev

(AJAY KUMAR MITTAL)
JUDGE