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IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos.576,577 & 578/Coch/2018 & S.P. Nos.47, 48 & 49/Coch/2018
Assessment Years : 2013-14 to 2015-16

HLL Biotech Limited, Mahilamandiram road, Poojappura, Trivandrum. [PAN: AACCH 8828A]	**Vs.**	The Income Tax officer, Ward-1(1), Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

Assessee by	Shri Govind Shastri, CA
Revenue by	Smt. A.S. Bindhu, DR

Date of hearing	07/03/2019
Date of pronouncement	15/03/2019

O R D E R

Per CHANDRA POOJARI, AM:

These appeals filed by the assessee are directed against the different orders of the CIT(A), Trivandrum dated 30/11/2018 and pertain to the assessment years 2013-14 to 2015-16.

2. The assessee has raised the following grounds:

> 1. The CIT(A) erred in confirming the action of the Assessing Officer in not setting off the interest income received during construction period against the expense during construction period and assessing it as income from other sources" overlooking the fact that income earned on funds which are otherwise inextricably linked to the setting up of the plant is

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required to be capitalized and set off against the expense during construction.

2. The CIT(A) failed to note that the ratio of the Apex Court in the case of Turticorin Akali Chemicals & Fertilizers Ltd. (227 ITR 172) is not applicable to the case of the appellant since the appellant is not at liberty to use the interest as it like and it has to be used only for the purpose of the integrated vaccination project, following the general guidelines of Government of India.

3. Without prejudice to the above grounds, the CIT(A) erred in confirming the action of the Assessing Officer in not setting off the business loss of Rs.7,88,636/- assessed in the original assessment order against the additions made by him.

3. The facts of the case are that the assessee company is a subsidiary of M/s. HLL Lifecare Limited. It was set up by the Government of India for thepurpose of developing Integrated Vaccine Complex. The assessee had not commenced commercial operations and the assessee was in receipt of interest income from deposits in Bank as well as from Holding Company amounting to Rs.4,17,75,000/-. The assessee had claimed that the interest income was capital receipt to be set off against the expenditure incurred during this period. The Assessing Officer considered the issue of taxability of interest income earned prior to commencement of business and held that interest income is taxable under the head 'income from other sources'. The Assessing Officer held that expenditure incurred by the assessee for the purpose of setting up its business cannot be allowed as deduction nor could it be adjusted against any other income under any other head.

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4. On appeal, the CIT(A) placed reliance on the judgment of the Supreme Court in the case of Sitaldas Tirathdas, 41 ITR 367 where principles in respect of diversion by overriding title had been laid down. The relevant part of the decision is as under:

> *"These are the cases which have considered the problem from various angles. Some of them appear to have applied the principle correctly and some, not. But we do not propose to examine the correctness of the decisions in the light of the facts in them. In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation, income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable. In our opinion, the present case is one in which the wife and children of the assessee who continued to be members of the family received a portion of the income of the assessee, after the assessee had received the income as his own. The case is one of application of a portion of the income to discharge an obligation and not a case in which by an overriding charge the assessee became only a collector of another's income. The matter in the present case would have been different, if such an overriding charge had existed either upon the property or upon its income, which is not the case. In our opinion, the case falls outside the rule in Bejoy Singh Dudhuria's case (supra) and rather falls within the rule stated by the Judicial Committee in P.C. Mullick's case (supra)." [Emphasis Supplied]*

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4.1 Thus, the CIT(A) observed that obligation to apply income in certain way would not amount to diversion by overriding title. Therefore, according to the CIT(A), in the case of the assessee, the letter of the Ministry is only obligation to apply interest income for the objectives of the assessee and the same cannot be treated as diversion by overriding title. Further, the CIT(A) relied on the decision of the ITAT, Delhi in the case of Mussoorie Dehradun Development Authority, 22 taxmann.com 93 wherein it was held that the memorandum issued by the State Government only regulates how the funds so collected are to be incurred for the fulfilment of its objects and which sector has to be given preference and thus, it only suggests application of income. In the light of the above decisions, the CIT(A) held that there was no merit in the ground raised by the assessee that the interest income was not taxable in view of the guidelines issued by the Government and the same was dismissed.

4.2 The CIT(A) observed that during the financial year 2013-14, in the Audit Report Note; 10, "Notes to financial statements for the period ended 31-03-2013, in Sl. No. 1.7 to 1.9, the Auditors have stated that:

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> *"No Profit and Loss account has been prepared since the company is yet to commence commercial operations and the project is under construction stage....., Unutilized surplus funds of the company is kept in short term fixed deposit with Canara Bank, Cantonment Branch, Trivandrum and Indusind Bank. Nungambakkam, Chennai. Interest income is disclosed separately and deducted from the total of the revenue expenditure incurred during the construction period so that the net amount of expenditure is capitalized."*

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"The expenditure during construction of the period is included under intangible assets under development and the same will be allocated to the respective fixed assets on the completion of construction."

"No deferred tax liability and current income tax liability has been recognized as the company is yet to commence commercial operations"

As per Note 4 D(i) the assesse has income from 'Interest on Deposits', Rs. 3,23,91,000/- and 'Interest Income from Holding Company' Rs. 93,84,000/-.

Thus, CIT(A) observed that the assessee had earned interest on unutilized surplus funds.

4.3 Finally, the CIT(A) by relying on the decision of ITAT, Hyderabad Bench in the case of Thermal Powertech Corporation India Ltd. 81 taxmann.com 168, concluded that the interest income earned on unutilized surplus funds is to be assessed as income under the head 'income from other sources'. Accordingly, the CIT(A) confirmed the addition of Rs.4,17,75,000/- made by the Assessing Officer.

5. Against this, the assessee is in appeal before us. The Ld. AR submitted that the assessee had commenced construction during the financial year 2012-13 and had planned to complete the project by financial year 2018-19. During the construction period, the assessee had temporarily parked the share capital funds infused by the Govt. of India, which was not immediately required, in deposits with banks on which it earned interest income. HLL Lifecare Ltd. also paid interest on such funds received from Govt. of India, till it was transferred to the

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assessee. It was submitted that interest received from banks and HLL Lifecare Ltd. was Rs.4,17,75,000/- for AY 2013-14, Rs.14,88,64,388/- for AY 2014-15 and Rs.11,62,02,364/- for AY 2015-16. The assessee had reduced the interest income so received from the construction expenditure, since these funds are inextricably linked to the funds received for setting up of the vaccine plant as per the order of the Govt. of India and as per general policy/guidelines for any funds provided by the Government of India, any income earned out of such funds provided for any specific purpose, it should be utilized only for the purpose for which such funds were given.

5.1 It was submitted that the accounts were also audited by C&AG and there were no adverse comments from them for the method of accounting followed by the assessee.

5.2 The Ld. AR submitted that in the order dated 23.03-2018 for the AY 2014-15, the CIT (Appeals) upheld the action of the Assessing Officer on the following ground:

> *"Taxability of interest income to my understanding depends upon whether the assessee was authorized to temporarily park the surplus fund and to earn interest thereon or not. In a situation where the assessee had received grant from the Government and received interest on a temporary parking on the instruction of the Government then the interest so received being part of the grant should not be taxed as income. But, if the grant is temporarily parked without specific direction/instruction from the Government then the interest earned cannot be incidental to the set purpose and thereby shall necessarily be brought to tax as income from other sources in the hands of the assessee.*

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No specific direction from the Ministry of Health and Family Welfare, Government of India and HLL Lifecare Ltd while giving the fund that the surplus fund not immediately required for the implementation of project can temporarily be deposited with banks and interest earned thereon would form part of the fund, has ever been made.

The entire conduct of the assessee right from receiving the fund to the disbursement and parking of the fund shows that it acted as its own fund but not on behalf of the Ministry of Health and Family Welfare, Government of India and HLL Lifecare Ltd. The assessee as far as the temporary parking of the fund is concerned, never has been subjected to the directions of the Ministry of Health and Family Welfare, Government of India and HLL Lifecare Ltd. In the decision relied on by the assessee, the Karnataka Urban Infrastructure Development & Finance Corporation is not only a nodal agency but also committed to apply the interest earned from bank deposits only for the purpose as provided in the guidelines. In the instant case, no specific direction from the Ministry of Health & Family Welfare, Govt. of India and HLL Lifecare has ever made to park temporarily the unutilized fund to earn interest and to return back the same.

5.3 The Ld. AR further submitted that when the case for AY 2014-15 challenging the above order of CIT(A) was heard by ITAT in ITA No.179/Coch/2018, this letter was produced as additional evidence, since the letter was received by the assessee only during June, 2018. The ITAT vide order dated 24.09.2018 had admitted this additional evidence and had remitted the case back to CIT(A) with the following observation :

"The additional evidence filed by the assessee in the form of a letter from Govt. of India, Ministry *of Health & Family Welfare dated 14.06 2018 is very vital for deciding the disputed issue. Being so. we are inclined to admit the additional evidence. Accordingly, we remit the issue to the file of the CIT(A) to decide it afresh after considering the relevance of the letter supra. "*

As directed by the Tribunal, the case was heard again by CIT(Appeals) to decide the issue, after considering the additional evidence. However, it was submitted that the CIT(A) by relying on judgment of the Supreme Court in the case of

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Sitaldas Tirathdas (41 ITR 367 SC) dismissed the appeal again, on the ground that the guidelines issued by Govt. of India does not result in diversion of income by overriding title. According to the ld. AR, the issue in this case was maintenance payment to wife and children under consent decree and the Apex court held that since for paying such maintenance no charge on the property was created, this was not diversion at source but only application of income to discharge an obligation which decision is not applicable to the facts of the present case, since in the case of the assessee, there is specific direction from the Govt. of India to utilize the interest earned by way of depositing the equity funds for the purpose of the vaccine project only and not for any other purpose. In the case of the assessee, since the interest can be utilized only for the purpose of setting up the vaccine project and it does not have the liberty to utilize the funds for any other purpose, it was diverted before it reached them. Hence this is a clear case of diversion by overriding title. The CIT(Appeals) had also relied on the decision of the ITAT Hyderabad in the case of Thermal Powertech Corporation India Ltd. vs. DCIT in ITA No.1534/Hyd/2016 dated 26/04/2017 in concluding that the interest income is to be assessed under the head "Income from other sources". According to the Ld. AR, the facts of this case are also not applicable since in that case the assessee had earned interest on deposits made out of borrowed funds and it had the liberty to utilize the same for any purpose. In the case of the assessee, it was submitted that it had temporarily parked the share capital funds infused by the Govt. of India for

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setting up the vaccine plant, which is not immediately required, in deposits with banks on which it earned interest income. The Ld. AR relied on the judgment of the Apex Court in the case of CIT vs. Bokaro Steel Ltd. (236 ITR 0315) wherein it was held that when 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.

5.4 The Ld. AR also relied on the following case laws:

1. ITO vs. Bank Note paper Mill India P. Ltd. (56 ITR (Trib.) 266 (Bang.)
2. Indian Oil Panipat Power Consortium Ltd. vs. ITO (315 ITR 255)
3. ITO vs. Alliance Hospitality Services Pvt. Ltd. (ITA No. 3191/Mum/2013 dated 28/08/2017) (ITAT, Mumbai)
4. CIT vs. Karnataka Urban Infrastructure Development and Finance Corporation (315 ITR 301) (Kar.)
5. Adani Power Ltd. vs. ACIT (155 ITD 239) (ITAT, Ahmedabad)
6. CIT vs. VGR Foundations (298 ITR 132) (Mad.)

5.5 Further, the Ld. AR submitted that as general policy/guidelines for any funds provided by the Government of India, any income earned out of such funds provided for any specific purpose, it should be utilized only for the purpose for which such funds were given and the recipient is not at liberty to use the interest income as it like. Following these guidelines, assessee had utilized the interest received on funds exclusively provided for vaccine project, for implementing the project and this in a way had helped it to meet the cost overrun of about Rs. 116 crores. The Ld. AR relied on the letter dated 14/06/2018 issued by Ministry of Health & Family Welfare in support of the

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argument that there is diversion by overriding title which is reproduced as follows:

F. No.A-45013/07/2018-HPE
Government of India
Ministry of Health & Family Welfare

Nirman Bhawan, New Delhi
Dated the 14th June, 2018

To,

The Chief Executive Officer,
M/s. HLL Biotech Limited,
SR No: 192 & 195, Tirumani Village,
Chengalpattu-603 001.

Subject: Utilization of interest earned on equity funds of Rs.274.88 crore-reg.

Sir,

The undersigned is directed to refer to your letter dated 22nd January, 2018. The GOI has infused Rs.285 Crore towards equity funds through HLL Lifecare Limited for establishing Integrated Vaccine Complex at Chengalpattu out of which Rs.274.88 Crores paid in cash and 100 acre of land in kind with a valuation of Rs.10.12 Cr. As a general policy any income earned out of funds provided by GOI for any specific purpose, must be utilized only for the purpose for which such funds are released.

2. It is clarified that any interest earned by way of depositing the said equity funds in Banks or otherwise form part of funds for establishing the Integrated Vaccine Project at Chengalpattu, Chennai and to be utilized for the purpose of the project only and not for any other purpose.

This issues with the approval of JS(HPE).

Yours faithfully,
Sd/-
(Soma Sanyal)
Under Secretary to the Govt. of India

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6. The Ld. DR relied on the order of the authorities below.

7. We have heard the rival submissions and perused the record. We have carefully gone through the case laws relied on by both the parties. In the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. vs. CIT (1997) (227 ITR 172), the Supreme Court observed as under:

"The assessee was a company incorporated on 3rd Dec., 1971 for the purpose of, inter alia, manufacturing heavy chemicals such as ammonium chloride and soda ash. The trial production of the factories of the company commenced on 30th June, 1982. For the purpose of setting up of the factories, the company had taken term loans from various banks and financial institutions. That part of the borrowed funds which was not immediately required by the company was kept invested in short-term deposits with banks. Such investments were specifically permitted by the memorandum and articles of association of the company. The company had also deposited certain sums with the Tamil Nadu Electricity Board. It had also given interest-bearing loans to its employees to purchase vehicles. Upto the asst. yr. 1980-81, interests earned by the company from the various loans given by the company and also from the bank deposits were shown as income and was taxed accordingly. For the accounting year ending on 30th June, 1981, (asst. yr. 1982-83), the assessee received a total amount of interest of Rs. 2,92,440. In its return of income filed on 22nd June, 1982, the company disclosed the said sum of Rs. 2,92,440 as "Income from other sources". It also disclosed business loss of Rs. 3,21,802. After setting off the interest income against business loss, the company claimed the benefit of carry forward of net loss of Rs.29,360. The company later on realised its mistake and on 26th Dec., 1984, it filed a revised return showing business loss of Rs. 3,21,802. It claimed that according to the accepted accounting practice, interest and finance charges along with other pre-production expenses will have to be capitalised, and that, therefore, the interest income of Rs.2,92,440 should go to reduce the pre-production expenses (including interest and finance charges), which would ultimately be capitalised. In this connection, the company highlighted the fact that during the previous year relevant to the asst. yr. 1982-83, it had incurred a sum of Rs. 1,13,06,068 as and by way of interest and finance charges, which had to be capitalised along with other pre-production expenses. In other words, according to the assessee, the interest income of Rs.2,92,440 was not exigible to tax. The ITO rejected the assessee's claim that the interest income was not exigible to tax. The view of the ITO was upheld by the CIT(A). The company's

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further appeal to the Tribunal was dismissed. We are also concerned in this case with the asst. yr. 1983-84. During the previous year relevant to this assessment year, the assessee had received interest income of Rs.1,08,336. The assessee this assessment year, the assessee had received interest income of Rs. 1,08,336. The assessee filed its return in which it claimed that the interest income of 1,08,336 should go to reduce the pre- production expenses including the interest and finance charges which would ultimately be capitalised. The Income-tax Officer rejected the assessee's claim that the interest income was not exigible to tax. The view of the ITO was upheld by the CIT(A) . The company's further appeal to the Income Tax Appellate Tribunal was dismissed. In view of the conflict of decisions between the Madras and Andhra Pradesh High Courts, the Tribunal referred the question regarding taxability of income, directly to the Supreme Court".

7.1 On the above facts, it was held as under:

"The company had surplus funds in its hands. In order to earn income out the surplus funds, it invested the amount for the purpose of earning interest. The interest thus earned is clearly of revenue nature and will have to be taxed accordingly. The accountants may have taken some other view but accountancy practice is not necessarily good law. This case is not a case of diversion of income by overriding title. The assessee *was at liberty to deal with the interest amount as it liked. The application of the income for payment of interest would not affect its taxability in any way. The company could not claim any relief.*

Under section 70 or section 71 since its business had not started and there could not be any computation of business income or loss incurred by the assessee *in the relevant accounting years. in such a situation, the expenditure incurred by the* assessee *for the purpose of setting up its business could not be allowed as deduction, nor could it be adjusted against any other income under any other head. Similarly any income from a non-business source could not be set off against the liability to pay interest on funds borrowed for the purpose of purchase of plant and machinery even before commencement of the business of the* assessee*."*

7.2 In the detailed discussion while adjudicating this matter, the Supreme Court had also observed at page 179 as under:

"The basic proposition that has to be borne in mind in this case is that it is possible for a company to have six different sources of income, each one of

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which will be chargeable to income tax. Profits and gains of business or profession is only one of the heads under which the company's income is liable to be assessed to tax. If a company has not commenced business, there cannot be any question of assessment of its profits and gains of business. That does not mean that until and unless the company commences its business, its income from any other source will not be taxed. If the company, even before it commences business, invests the surplus fund in its hand 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 s. 22 as income from House property. Likewise, a company may have income from other sources. It may buy shares and get dividends. Such dividends will be taxable under s. 56 of the Act. The company may also, as in this case, keep the surplus fund in short-term deposits in order to earn interest. Such interests will be chargeable under s. 56 of the Act."

Thus, it is clear from the above discussion that if whenever an assessee is in the process of setting up of the business, if any, income arises under any of the heads except under the head profits and gains of business, then such income has to charged to tax under that particular head.

7.3 The Ld. AR had vehemently argued that this principle was diluted by the Supreme Court while deciding the issue in the case of Bokaro Steel Ltd. (supra). In the case of Bokaro Steel Ltd. (supra), the issue was whether rent received from contractors against houses given for staff of contractors, machine hire charges received from machines given by the assessee company and interest received from contractors on advances made by the assessee company to such contractors, was assessable to tax. The Supreme Court observed that these receipts basically pertain to arrangements made by the assessee with contractors

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pertaining to the work of construction. To smoothly execute the work, some facilities were extended by the assessee company to the contractors to facilitate the work of construction and thus these receipts have been correctly adjusted by the assessee company against the charges payable to contractors. It was also observed that had the assessee not made these arrangements and had the contractors made these arrangements, charges to the company would have been more. It is significant to note that in this case itself one more issue was there, i.e. interest received from investments made out of borrowed funds which were not immediately required. This interest was held to be taxable by following the decision of M/s Tuticorin Alkali Chemicals & Fertilisers Ltd. vs. CIT (1997) (227 ITR 172). The relevant portion of the said judgment reads as follows:

> *"During these assessment years, the respondent assessee had invested the amounts borrowed by it for the construction work which were not immediately required, in short-term deposits and earned interest. It has been held in these proceedings that the receipt of interest amounts to income of the assessee from other sources. The assessee has not filed any appeal from this finding which is given against it. In any case, this question is now concluded by a decision of this court in of M/s Tuticorin Alkali Chemicals & Fertilisers Ltd. v/s. CIT [1997] 227 ITR 172. Hence, we are not called upto to examine that issue."*

Thus, it is clear that as far as interest received from short term deposits which were not immediately required, were held to be taxable following the decision of M/s Tuticorin Alkali Chemicals & Fertilisers Ltd. vs. CIT (supra). Only those sums which were received from contractors, which we can say were inextricably

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connected with the construction activities, were held to be not taxable, rather than they were held to be reduced from the total capital expenditure.

7.4 In the case of CIT vs. Karnataka Power Corporation (243 ITR 268), the first question referred before the Court was as under:-

> "(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in upholding the order of the CIT(A) who deleted the addition of Rs. 1,30,44,518 being interest receipts and hire charges from contractors by holding that the same are in the nature of capital receipts which would go to reduce capital cost ?"

From the question itself it is clear that in this case the issue was regarding interest receipts and hire charges from the contracts and that is why the principle laid down in Bokaro Steel Ltd. [supra] was followed.

7.5 We further find that the Supreme Court had again followed the decision of M/s Tuticorin Alkali Chemicals & Fertilisers Ltd. vs. CIT (supra) in the case of CIT vs. Coromandal Cements Ltd. [234 ITR 412]. In this case, the relevant portion reads as under:

> *"Against the judgment of the Andhra Pradesh High Court refusing to call for a reference of the question whether the Tribunal was right in holding that interest earned on short-term bank deposits during the pre-production stage could not be treated as income from other sources and should go towards the project cost, the Revenue filed an appeal to the Supreme Court. The Supreme Court, following its own judgment in of M/s Tuticorin Alkali Chemicals & Fertilisers Ltd. vs. CIT [1997] 227 ITR 172, allowed the appeal of the Revenue and set aside the judgment of the High Court."*

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Thus, it is clear that whenever interest is received during preproduction stage from short term deposits, same has to be taxed as income from other sources. This decision has been again followed by the Supreme Court in the case of CIT vs. Autokast Ltd. [248 ITR 110]. The head note of this decision reads as under-

> *"From the decision of the Kerala High Court (1998) (229 ITR 789) holding that where the assessee kept the money borrowed from the Industrial Development Bank of India for purchase of plant and machinery in short-term deposits in banks and used it in bill discounting until payment for the plant and machinery, the interest earned on the deposits was not taxable in the hands of the assessee as income from other sources but would go to reduce the actual cost of the plant and machinery. The Department took an appeal to the Supreme Court, the Supreme Court reversed the decision of the High Court holding that the interest was taxable in the hands of the assessee."*

This judgment has been rendered on November 21, 2000 i.e., much after the decision of Bokaro Steel Ltd. (supra] which was rendered on September 3, 1999 and the decision in the case of CIT vs. Karnataka Power Corporation (supra) which was rendered on July 27, 2000. Thus, it is clear that the principles laid down in of M/s Tuticorin Alkali Chemicals & Fertilisers Ltd's case (supra) were never diluted and the decisions cited above operate in different field.

7.6 As far as the second limb of the argument is concerned, to which the ld. counsel of the assessee has referred to the decision of the Hon'ble Delhi High Court in the case of Indian Oil Panipat Power Consortium Limited vs. ITO (supra), it was observed by the Hon'ble Delhi Court at placitum as under:

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"4. It is important to note that the Tribunal without holding that the finding of fact of the Commissioner of Income-tax (Appeals), that the interest earned was 'inextricably linked' with the setting up of the power plant reversed the decision of the Commissioner of Income-tax (Appeals)by making a bald observation that the "deposit of share capital has no or very remote connection with setting up of plant and machinery". The Tribunal further observed that it was an independent income earned in a similar fashion as was the case in Tuticorin Alkali Chemicals [1997] 227 ITR 172 (SC)."

From the above, it is clear that there was already a finding by the first appellate authority that interest earned was inextricably linked with the setting up of the power plant. Whereas in the case before us, there is no such finding and the funds which were required for the construction of the vaccine plant had been placed with Banks and the holding company as short term deposits.

7.7 From the above discussion, it is clear that the decision of the Delhi High Court in the case of Indian Oil Panipat Power Consortium Limited vs. ITO (supra) is not applicable to the facts of the assessee's case before us. Thus, it is clear that in the case before us, assessee was still at the pre-commencement stage and during this phase, the assessee had raised equity funds which was invested in fixed deposits of the Banks as well as the holding company and the assessee had earned interest on the same. The same has to be taxed as 'income from other sources' in the light of the decision of the Hon'ble Supreme Court in the case of M/s Tuticorin Alkali Chemicals & Fertilisers Ltd. vs. CIT (supra).

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7.8 For the above proposition, we are also supported by the decision of the Bombay High Court in the case of CIT vs. L. And T. McNeil Ltd. (202 ITR 662) had an occasion to examine this aspect and it was observed as under:-

> *"Held, (i) that though the main business of the assessee was to undertake manufacturing activities, the plant and machinery was installed on June 10, 1974 long after the end of the relevant previous year and the actual manufacturing commenced only thereafter and the first order was executed on September 27, 1974. The Tribunal was not correct in holding that the assessee had set up its business in the previous year corresponding to the assessment 1974-75."*
>
> *"When a business is established and is ready to commence business then it can be said that business is set up. But before it is ready to commence business, it is not set up. If a question arises as to whether a particular business can be said to have been set up in the relevant assessment year, that question will have to be determined on the facts and circumstances of the case."*

From the above, it is clear that unless and until the machinery of the project is fully installed and the project becomes operational and the order is executed, it cannot be said that the business has been set up. Before us, the fact is that the assessee had not yet commenced construction of the vaccine project. Therefore, it is clear that business was not set up and there was no question of claiming any expenditure.

7.9 The Ld. relied on the letter issued by the Ministry of Health & Family Welfare cited supra to show that the interest income earned from equity funds is inextricably linked to the setting up of the plant and it is required to be capitalized and set off against the expenditure incurred during the construction

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of the Project. In our opinion, because the shareholder of the company was in a position to pass resolution or issue any letter, it cannot change the character of the source of the income. As discussed earlier, the business was not set up during the relevant previous year and the interest earned from the Bank deposits is to be assessed as income from other sources and it cannot be set off against the capital expenditure. Since we have relied on the judgment of the Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. vs. CIT (1997) 227 ITR 172, we are not going to consider the other judgments relied upon by the Ld. AR. Accordingly, this ground of appeal of the assessee is dismissed.

8. The next issue is with regard to set off of business loss against the addition made by the Assessing Officer.

8.1 The facts of the case are that the Assessing Officer held that the assessee could not claim any relief by way of setting off of business loss since the business had not started and there could not be any computation of business income or loss incurred by the assessee in the relevant accounting year 2012-13. In such a situation, the Assessing Officer held that the expenditure incurred by the assessee for the purpose of setting up its business could not be allowed as deduction or could it be adjusted against any other income under any other head.

8.2 On appeal, the CIT(A) confirmed the findings of the Assessing Officer.

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8.3 Against this, the assessee is in appeal before us.

8.4 We have heard the rival submissions and perused the record. As discussed earlier, the business of the assessee was not set up and it had not commenced commercial operations. In such a situation, there is no business loss which is to be computed under the head income from business. As such, there is no question of set off of interest income against business loss. Accordingly, this ground of appeals of the assessee is also rejected.

S.P. Nos. 47,48 & 49/Coch/2018

10. Since we have disposed of the appeals of the assessee, the Stay Petitions filed by the assessee have become infructuous and the same are dismissed as infructuous.

11. In the result, the appeals of the assessee as well as the Stay Petitions filed by the assessee are dismissed.

Order pronounced in the open Court on this 15th March, 2019

sd/-	sd/-
(GEORGE GEORGE K.)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Place: Kochi
Dated: 15th March, 2019

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GJ
Copy to:
1. HLL Biotech Limited, Mahilamandiram Road, Poojappura, Trivandrum.
2. The Assistant/Deputy Commissioner of Income-tax, Circle-1, Income Tax Officer, Ward-
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin