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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 177/2022

PR. COMMISSIONER OF INCOME TAX-7 Appellant

Through: Mr. Puneet Rai and Ms. Adeeba
Mujahid and Mr. Karan Pandey,
Advocates.

versus

M/S TRIUMPH REALTY PVT. LTD. Respondent

Through: Ms. Kavita Jha, Advocate.

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Date of Decision: 1st June, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the Order dated 27th August, 2020 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2948/Del/2018 for the Assessment Year 2013-14.
2. Learned counsel for the Appellant submits that the ITAT has erred in allowing the capitalisation of interest on FDRs earned during the period of construction without appreciating the fact that while utilizing the ECB funds the assessee did not follow the RBI guidelines. He also submits that the ITAT has failed to consider the various decisions of the Apex Court



including *Tuticorin Alkali Chemicals and Fertilizers Limited vs CIT, (1997) 227 ITR 172 (SC)*.

3. This Court vide its order in ITA 70/2022 dated 31st March, 2022 dismissed a similar appeal preferred by the Revenue against the ITAT order passed in assessee's own case for the earlier Assessment Year 2012-13. This Court in ITA 70/2022 held that “*The judgment passed in Tuticorin Alkali Chemicals (supra) referred to and relied upon by learned standing counsel for the Appellant has been considered and explained subsequently by the Apex Court in Commissioner of Income Tax, Bihar II, Patna vs. Bokaro Steel Ltd., Bokaro, (1999) 1 SCC 645, wherein it has been held “.....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. Subsequently, a Division Bench of this Court in Indian Oil Panipat Power Consortium Limited, New Delhi vs. Income Tax Officer, (2009) 315 ITR 255 (Delhi) has held “.....In view of the discussion above, in our opinion the Tribunal misdirected itself in applying the decision of the Supreme Court in Tuticorin Alkali Chemicals (supra) in the facts of the present case. In our opinion on account of the finding of fact returned by the CIT(A) that the funds infused in the assessee by the joint venture partner were inextricably linked with the setting up of the plant, the interest earned by the assessee could not be treated as income from other sources. In the result we answer the question as framed in favour of the assessee and against the Revenue.....”*. The aforesaid principle has also been reiterated by this Court in *Principal Commissioner of Income Tax vs. Facor Power Ltd., (2016) 380 ITR 474 (Delhi)*.”



4. Keeping in view the aforesaid, this Court is of the opinion that no substantial question of law arises for consideration as the questions sought to be raised in the present appeal are squarely covered by the decisions of the Apex Court as well as this Court. Accordingly, the present appeal is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JUNE 1, 2022
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