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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ ITA 55/2024 & CM APPL 4264/2024  
PR. COMMISSIONER OF INCOME TAX -7 ..... Appellant  
Through: Mr. Ruchir Bhatia, Adv.

versus

TRIUMPH REALTY PVT. LTD. .... Respondent  
Through: Ms. Kavita Jha and Mr. Anant  
Mann, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE YASHWANT VARMA**  
**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR**  
**KAURAV**

**ORDER**  
**23.01.2024**

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**CM APPL 4264/2024**

Bearing in mind the disclosures made, the delay of 50 days in filing the appeal is condoned.

The application shall stand disposed of.

**ITA 55/2024**

1. Mr. Bhatia, learned counsel appearing for the appellant fairly states that the questions raised herein stand concluded in light of the judgment dated 31 March 2022 rendered by the Court in ITA 70/2022 wherein the following was observed:

“3. The admitted facts of the present case are that the assessee had taken Foreign ECB loan of Rs.82.37 crores for the purpose of acquisition of a capital asset i.e. renovation and refurbishment of hotel acquired by the assessee under SARFEASI Act. The entire ECB loan was disbursed in a single trench in the year under consideration and during this year, the assessee could utilise only Rs.33.70 crores. Therefore, the assessee had temporarily parked the ECB loan in FDRs till utilisation for fixed asset/capital expenditure strictly in compliance with RBI instructions. The assessee had paid interest of Rs.13.38 crores and has earned interest on FDRs of Rs.4.03 crores. The net amount of interest of Rs.9.35 crores has



been added to the preoperative expenditure pending capitalization.  
4. 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.”

5. 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.....”

6. 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)*.

7. 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.”

2. In view of the aforesaid, no substantial question of law arises. The appeal along with pending application shall consequently stand dismissed on the aforesaid terms.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**JANUARY 23, 2024/ neha**