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

\+ ITA 882/2018

THE PR. COMMISSIONER OF INCOME TAX -4..... Appellant
Through: Ms. Vibhooti Malhotra & Mr. Ruchir Bhatia, Advocates

versus

INDIAN SYSNTHETIC RUBBER LTD. ..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>

% 17.08.2018

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 in the case of Indian Synthetic Rubber Pvt. Ltd. arises from the order of the Income Tax Appellate Tribunal dated 7.2.2018 in ITA No.4827/Del/2017 and pertains to the assessment year 2013-14.

2. The issue raised relates to capitalisation of interest received from the bank fixed deposits and set-off of this interest from the pre-operative expenses.

3. The findings recorded by the Tribunal are that the fixed deposits were procured from surplus funds, being share capital and the borrowings. Further and importantly, the fixed deposit receipts had been used and utilized for obtaining bank guarantees given to 3rd parties and the government agencies for the purpose of capital job etc.

for setting-up and construction of the factory, i.e., the project.

4. It is an accepted and admitted position that the respondent/assessee had not commenced and was not engaged in any business activity as the business of manufacture and production of styrene butadiene rubber had not started. This factum is admitted and accepted in the assessment order.

5. In the aforesaid factual background, the issue raised by the appellant/Revenue is covered by the ratio in ***CIT v. Bokaro Steel Ltd.*, [1999] 236 ITR 315 (SC)** and decision of this High Court in **ITA No.233/2018**, **PCIT-VI vs. M/s. NTPC Tamil Nadu Energy Co. Ltd.**, decided on 23.2.2018. Decision of the Supreme Court in ***Tuticorin Alkali Chemicals and Fertilisers Ltd. vs. CIT*, [1997] 227 ITR 172 (SC)** would not be applicable, as the business of the respondent/assessee had not commenced, which is admitted and accepted by the appellant/Revenue.

6. Accordingly, no substantial question of law arises and the appeal is dismissed *in limine*, with no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

AUGUST 17, 2018
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