

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17037 of 2022**

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Bihar Police Building Construction Corporation Pvt. Ltd. Through its Chief  
Accounts Officer of Hemant Kumar, (M) age 53 years, 5 B.M.P. Campus, P.O.  
Veterinary College, P.S. Veterinary College Dist. Patna, Bihar 800001.

... .. Petitioner/s

Versus

1. Principal Chief Commissioner of Income Tax C.R. Building, Bir Chand  
Patel Path Patna. 800001
2. Principal Commissioner of Income Tax, C.R. Building, Bir Chand Patel Path  
Patna. 800001
3. Additional Commissioner of Income Tax, C.R. Building, Bir Chand Patel  
Path Patna. 800001
4. Joint Commissioner of Income Tax, C.R. Building, Bir Chand Patel Path  
Patna. 800001
5. Deputy Commissioner of Income Tax, LokNayak Bhawan, Dakbanglow  
Road, Patna 800001
6. Assistant Commissioner of Income Tax, LokNayak Bhawan, Dakbanglow  
Road, Patna 800001

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Prakash Sahay, Advocate  
For the Respondent/s : Mr. Archana Sinha @ Archana Shahi, Sr. SC,  
Income Tax

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**CAV JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 05-09-2023**

The writ petition is filed against an assessment  
order passed under Section 143(3) of the Income Tax Act  
(hereinafter referred to I.T. Act) dated 26.03.2021. The statutory  
remedy by way of an appeal was not availed of. The question  
raised is also one which can be considered in appeal; as to  
whether the income earned on the deposits made by the



assessee, is liable to be computed in the total income of the assessee; when the interest earned is from the funds received as grants from the Government, for construction of buildings of the Police Department. It is also contended that Annexure-3 government circular has stipulated that the grants for the successive years would be reduced to the extent of the interest earned from the un-utilized funds of the earlier years kept in fixed deposits. Hence, though, earned as interest from the fixed deposits from the banks, it cannot be assessed as income from other sources under Section 56 of the I.T. Act, is the question raised. We have to notice that there would be gross delay from the date on which the order is passed; which would also be a hurdle insofar as availing the alternate remedy of an appeal.

2. We are not convinced that the matter falls under any of the specific grounds found in *State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499*. There is no jurisdictional error, violation of principles of natural justice or abuse of process of Court averred or argued by the petitioner in the above writ petition. We are proceeding to adjudicate the issue since the matter is pending from 2022 and there is no purpose served in relegating the petitioner to the Appellate remedy.



3. Though, there are contentions raised of the assessment order having not been served on the assessee, it is to be noticed that the department asserts otherwise of the order having been uploaded in the website.

4. Learned counsel for the petitioner relied on the decisions of the Hon'ble Supreme Court in *Commissioner of Income Tax, Bihar - II, Patna v. Bokaro Steel Ltd, Bokaro*, reported in (1999) 1 SCC 645 followed by the Delhi High Court in *NTPC Sail Power Company Private Limited v. Commissioner of Income Tax* reported in 2012 SCC Online Del 3717 decided on 17.10.2010. The department, on the other hand, points out that the assessee, is engaged in the construction of buildings for the Police Department. The decisions cited are not applicable since they were with respect to borrowed funds, as distinguished from the grants received from the Government. The decisions clearly were on the interest on borrowed funds, parked in fixed deposits for short terms, while the expansion of the business or construction activities for the purpose of business are going on. It was only in that circumstance the interest earned on short term deposits were allowed set-off as against the interest paid on such borrowed funds.

5. As far as the facts are concerned, the assessee



receives grants from the State Government for the purpose of construction of buildings, which were deposited in banks. In the subject assessment year being 2018–19, the assessee earned a total interest of Rs. 12,63,82,110/-. The assessee returned only an interest income of Rs. 10,01,81,879/- after deducting an amount of Rs. 2,68,00,231/-. The assessee claimed TDS for the total amounts received as interest. The Assessing Officer added on the differential amount of interest coming to Rs. 2,68,00,231/- as the income of the assessee, against which the present writ petition is filed.

6. In ***Bokaro Steel Ltd., (supra)*** the issue as to whether the interest earned from borrowed funds kept in fixed deposits could be termed as income from other sources or viewed as capital receipts was not raised at all. A mere reference was made to the issue to find it covered by the ***Tuticorin Alkali Chemicals and Fertilizers Ltd., v. CIT (1997) 6 SCC 117***. The Hon'ble Supreme Court in ***Tuticorin (supra)*** held that interest earned at the pre-business stage by investing part of borrowed funds is taxable as income from other sources and is not adjustable against the interest paid on borrowings even if it could be capitalized after commencement of business. It was held that “*the amount of interest received by the company flows*



*from its investments and is its income and is clearly taxable even though the interest amount is earned by utilizing borrowed capital”* (sic para 14). It was held by the Hon’ble Supreme Court that it was perfectly permissible for the Company to keep the surplus funds in short-term deposits, where interest is earned; which would normally be chargeable under Section 56 of the Income Tax Act, in which event the company was not bound to utilize the interest earned to adjust it against the interest paid as borrowed capital. However, when borrowed capital is kept in short-term deposits and the interest income earned, though an independent source of income, not connected with the construction activities or business activities of the assessee; the same being inextricably connected with the setting up of a steel plant of the assessee; it could be viewed as capital receipts after commencement of business. We find no application for the dictum in the instant case.

7. In ***Bokaro Steel Ltd.***, (*supra*) , it was held that

*“in the case of Challapalli Sugar Ltd., v. CIT [(1975) 3 SCC 572 : 1975 SCC (Tax) 65 : (1975) 98 ITR 167] this Court examined the question whether interest paid before the commencement of production by a company on amounts borrowed for the acquisition and installation of plant and machinery would form part of the actual cost of the asset to the assessee within the meaning of that expression in Section 10(5) of the Indian Income*



*Tax Act, 1922 and whether the assessee will be entitled to depreciation allowances and development rebate with reference to such interest also. The Court held that the accepted accountancy rule for determining the cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly-started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalized and added to the cost of the fixed assets created as a result of such expenditure. By the same reasoning, 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.”*

**8. In *NTPC Sail Power Company Private Limited***

*(supra)*, the question referred was as to whether the interest earned on the deposits and advances can be added in the computation of total income instead of being set off against the interest on borrowed funds, utilized for the new unit. The High Court of Delhi also followed the principle laid down by the Hon’ble Supreme Court of there being an inextricable link to the setting up of a project which makes it a capital receipt not liable to tax but, ultimately used in the reduction of the cost of the project. In that case also, the funds invested by the assessee company and the interest earned were found to be inextricably



linked with the setting up of power plant and hence, liable to be treated as capital receipts.

9. In the present case, we have to notice that the interest earned is not of borrowed funds. The assessee is a construction corporation under the State, engaged in the construction of buildings for the Police Department. The construction is carried on by the Corporation with grants given by the Government. The grants given by the Government are parked in fixed deposits which earned interest. It has to be emphasized that the assessee is not carrying out the construction for the purpose of setting up of business or for expansion of a business; but is engaged in the activity of construction itself, with the funds made available by the Government. The interest income earned from the grants made by the Government for the purpose of construction of buildings for the Police Department can only be treated as income from other sources. It is not an activity inextricably connected with the construction of buildings and it does not in any manner reduce the cost of construction; as in the case of interest earned on borrowed funds parked in short term deposits, with which borrowed funds the construction is carried out. In the case of the assessee herein the funds parked in deposits, out of the grants received, are surplus



funds; since the amounts earned by the assessee from the deposit of such funds are set-off from the grants for the subsequent year. The principle in *Tuticorin Alkali Chemicals and Fertilizers Ltd.* (*supra*) applies squarely and not that of *Bokaro Steel Ltd.*, (*supra*).

10. The circular of the State Government providing for deduction of grants in the successive years to the extent of the interest earned from the grants of the earlier year, cannot regulate the taxability under the Income Tax Act. If at all, income tax is deducted from the interest earned, the Corporation would be entitled to request the Government to not deduct the amounts paid as income tax from the grants of the subsequent years. The circular issued by the State Government regulating the business/transaction between the Government and its Corporation cannot have any effect on the taxability of the interest income which is deemed to be income from other sources under Section 56 of the Income Tax Act.

11. There is no question of any deduction being permitted, as permissible under Section 36 (i)(iii) of the Act, which is with respect to interest paid on borrowed capital for the purpose of business or profession, there is no such factual ground raised herein.



12. We find absolutely no reason to entertain the writ petition and dismiss the same.

(K. Vinod Chandran, CJ)

Partha Sarthy, J. I agree

(Partha Sarthy, J)

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