

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL 2015

PRESENT

THE HON'BLE MR.JUSTICE VINEET SARAN

AND

THE HON'BLE MRS.JUSTICE S SUJATHA

ITA NO.202/2014

BETWEEN

1. THE COMMISSIONER OF INCOME-TAX,
C.R. BUILDING,
QUEENS ROAD,
BANGALORE
 2. THE ASSISTANT COMMISSIONER OF INCOME-TAX,
CIRCLE-11(5),
RASHTROTHANA BHAVAN,
NRUPATHUNGA ROAD,
BANGALORE.
- ... APPELLANTS

(BY SRI. K V ARAVIND, ADV.)

AND

M./S KARNATAKA STATE
AGRICULTURAL PRODUCE PROCESSING
& EXPORT CORPORATION LTD.,
NO.17, RICHMOND ROAD,
BANGALORE - 560 025.

... RESPONDENT

(BY SMT JINITA CHATTERJEE, ADV.
FOR SRI S PARTHASARTHI, ADV.)

THIS ITA / INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:20/12/2013 PASSED IN ITA NO.1078/BANG/2012, FOR THE ASSESSMENT YEAR 2008-2009. PRAYING THIS HON'BLE COURT TO:

I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE.

II. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.1078/BANG/2012 DATED:20/12/2013 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE- 11(5), BANGALORE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 07TH APRIL 2015, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **SUJATHA J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Revenue has challenged the order dated 20.12.2013 passed by the Income Tax Appellate Tribunal, “B” Bench, Bangalore.

2. The only question involved in this appeal is, “Whether the interest earned on grants made by the State Government kept in fixed deposits pending utilization should be treated as additional grant of the scheme or a revenue receipt exigible to tax under the head “income from other sources”?

3. The facts leading to this appeal are that the assessee is a company fully owned by the Government of Karnataka engaged in trading in

agricultural produce and is an approved channalising agent for Bangalore in respect of rose, onion and niger seeds. The Government of Karnataka sanctioned Rs.10.00 crores for improvement of infrastructure in order to encourage the farmers for development of horticultural sector and to promote export. The relevant part of the proceedings of the said Government Order dated 23.1.2007 issued by the Government of Karnataka is reproduced below:

“Government Order No.AHD 88 HPP 2006
Bangalore, dated 23.01.2007

Government is pleased to sanction new scheme namely, “Support to KAPPEC” (2401-00-800-2-29) DURING 2006-07.

2. The Director of Horticulture is permitted to release Rs.10.00 crores (Rupees Ten crores only) to DAPPEC for creation, of infrastructure facilities in various parts of the state for increasing the export of horticultural produce.
3. KAPPEC shall make earnest efforts to get matching contribution from Government of India through its agencies/schemes such as ASIDE, National Horticulture Mission for the purpose.
4. KAPPEC shall prepare viable and implementable schemes and obtain approval from the KAPPEC Board. The approved schemes will be submitted to the Department of Horticulture.
5. KAPPEC shall submit progress reports on physical and financial achievements to the director of Horticulture every month, which will reviewed in the monthly MMR meetings.
6. No part of the funds shall be utilised by KAPPEC for meeting expenses towards salary and establishment.

7. The KAPPEC shall make sure that utilization of funds shall benefit farmers in increasing the export of their horticultural produce for getting better returns.

8. While utilizing the funds KAPPEC shall follow KTPP Act and other procedures as required by the Rules.

9. This order issues with the concurrence of Finance Department vide its note No. ...417 ...2006 dated 20.01.2007.”

4. The grant of Rs.10.00 crores given by the State Government was kept in fixed deposits by the assessee-company till utilization for the desired projects. The interest earned on such fixed deposits was treated as income by the Assessing Officer and was brought to tax under the head “income from other sources”. Assessee preferred appeal before the Commissioner of Income Taxes (A), who dismissed the appeal against which appeal was preferred by the assessee before the Tribunal and the same was allowed, which is challenged by the revenue in this appeal.

5. We have heard the learned counsel Sri K V Aravind, appearing for the revenue as well as Ms.

Jinita Chatterjee appearing for the respondent-assessee.

6. Though the matter is listed for admission, with the consent of the parties the matter is taken for final disposal.

7. The learned counsel Sri K V Aravind placed reliance on the Judgment of the Apex Court in TUTICORIN ALKALI CHEMICALS AND FERTILIZERS LTD. VS. COMMISSIONER OF INCOME TAX ((1997) 227 ITR 172) and argued that the proceedings of Government of Karnataka by which a sum of Rs.10.00 crores was granted to the assessee did not contain any condition with respect to the utilization of interest. The assessee being a company engaged in trading of agricultural produce is not entitled to the benefit of interest earned from the fixed deposits to get it capitalized and made an attempt to distinguish the judgment of COMMISSIONER OF INCOME TAX & ANR. Vs KARNATAKA URBAN INFRASTRUCTURE

DEVELOPMENT & FINANCE CORPORATION ((2006)
284 ITR 582 (KAR)).

8. Learned counsel appearing for the assessee Ms. Jinita Chatterjee contended that the Government of Karnataka, while granting Rs.10.00 crores for improvement of infrastructure to promote agricultural exports, has categorically specified that the said grant shall be used for creation of infrastructure facilities in various parts of the State for increasing the export of horticultural produce and the assessee shall prepare viable and implementable schemes and obtain approval from KAPPEC Board and the said approved schemes will be submitted to the Department of Horticulture. Further, she relied on the letter dated 12.11.2013 in support of her contention that the Government has considered the interest earned on the grant released by the Government should be treated as additional grants of the scheme for which the grant is originally released. The learned counsel placed reliance on the

Judgment of this Court in KARNATAKA URBAN INFRASTRUCTURE DEVELOPMENT (supra), INDIAN OIL PANIPAT POWER CONSORTIUM LTD. VS. INCOME TAX OFFICER ((2009) 315 ITR 255), COMMISSIONER OF INCOME TAX VS. KARNATAKA POWER CORPORATION ((2001) 247 ITR 268), COMMISSIONER OF INCOME TAX VS. BOKARO STEEL LTD. ((1999) 236 ITR 315) to contend that the grant amount received from the Government of Karnataka, temporarily kept in fixed deposits till the utilization period has to be treated as the amount capitalized and is not an income to bring in within the tax net under the Act.

9. After hearing the rival contentions and perusing the material on record, we have noticed that the assessee-company is a Government owned company. In order to facilitate infrastructure facilities in various parts of the State of Karnataka, for increasing the export of horticultural produce, a sum of Rs.10.00 crores was granted to the assessee.

Before the utilisation of this grant amount, it was temporarily kept in fixed deposits and the interest was earned on the said amount. The assessee has placed certain additional evidence before the Tribunal to establish that the Government of Karnataka had specifically directed that interest earned on fixed deposits of grants pending utilisation should be treated as additional grant of the scheme and not to be treated as “income of the company”. No liberty was provided to the company to make use of that the interest earned on the said amount kept in fixed deposits. Though the assessee-company is engaged in trading in agricultural produce, it has no power to make use of the said grant made by the Government of Karnataka other than for a particular scheme i.e., the said amount cannot be diverted for any other purpose other than for which it was sanctioned as per the Government Order dated 23.1.2007. Thus, the emphasis made by the revenue that the assessee-company being engaged in trading activities cannot be considered as a nodal agency of the State

Government and the interest earned on the grants by the assessee-company has to be treated as income is not acceptable in view of the specific directions issued by the State Government regarding the utilization of the amount granted and on the interest accrued thereon.

10. The Tribunal relied on the Judgment of this Court in the case of Karnataka Urban Infrastructure Development (KUIDC) (supra) wherein it is held that:

“The material on record shows that the very purpose of constitution of the assessee was to act as a nodal agency for implementation of mega-city scheme worked out by the Planning Commission. Both the Central and the State Governments are expected to provide requisite finances for implementation of the said project. The funds from the Central and State Governments will flow directly to the specialised institutions/nodal agencies as grant and the nodal agency will constitute a revolving fund with the help of Central and State shares out of which finance could be provided to various agencies such as water, sewerage boards, municipal corporations, etc. The objective is to create and maintain a fund for the development of infrastructural assets on a continuing basis and, therefore, the assessee is a nodal agency formed/created by the Government of Karnataka as per the guidelines; there is no profit motive as the entire fund entrusted and the interest accrued

therefrom on deposits in bank though in the name of the assessee has to be applied only for the purpose of welfare of the nation/States as provided in the guidelines; the whole Of the fund belongs to the State Exchequer and the assessee has to channelise them to the objects of centrally sponsored scheme of infrastructural development for mega-city of Bangalore. Funds of one wing of the Government is distributed to the other wing of the Government for public purpose as per the guidelines issued. The monies so received, till it is utilised, is parked in a bank. The finding recorded by the Tribunal clearly shows that the entire money in question is received for implementation of the scheme which is for a public purpose and the said scheme is implemented as per the guidelines of the Central Government and, therefore, the assessee is only acting as a nodal agency of Central Government for implementation of these projects. It is not the case of the Revenue that the assessee was carrying on any business or activities of its own while implementing the scheme in question. The unutilised money, during which the project could not be fully implemented, is deposited in a bank to earn interest. That interest earned is also again utilised for the implementation of the mega-city scheme which is also permitted under the scheme. Therefore, in computing the total income of the assessee for any previous year the interest accrued on bank deposits cannot be treated as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of mega-city scheme. Therefore, we do not find any error in the conclusion reached by the Tribunal that there was no income earned by way of interest by

the assessee and setting aside the order of AO which is affirmed by the first appellate authority. The finding given by the Tribunal is purely a question of fact. We do not find any substantial question of law involved in this appeal and therefore, this appeal is liable to be dismissed at the stage of admission itself."

11. In Tuticorin (supra), the Apex Court has held that:

"There is another aspect of this matter. The company, in this case, is at liberty to use the interest income as it likes. It is under no obligation to utilise this interest income to reduce its liability to pay interest to its creditors. It can re-invest the interest income in land or share, it can purchase securities, it can buy house property, it can also set up another line of business, it may even pay dividends out of this income to its shareholders".

12. In the case of Karnataka Power Corporation (supra), the Apex Court following the Judgment of Bokaro Steel Limited (supra) has held that "interest receipts and hire charges from contractors are in the nature of capital receipts".

13. In the case of Bongaigaon Refinery and Petrochemicals Ltd., Vs. Commissioner of Income Tax (2001 ITR 251 page 329) the Apex Court considering the decision in Tuticorin Alkali Chemicals case

(supra) and Bokaro Steel case (supra) has held that in Tuticorin Alkali case, the question related was with the interest earned by the Company during its formative period by investments while in Bokaro Steel Ltd. case, it is so confined and did not apply where the receipts were directly connected with or were incidental to the work of construction of the assessee's plant. Accordingly, applying the law enunciated in Bokaro Steel Limited case allowed the appeal.

14. In the light of the judgments referred to above, we have examined the case on hand. It is clear that the assessee has received the grant of Rs.10.00 crores from the Government of Karnataka for a particular project i.e., for improvement of infrastructure and to promote export of horticultural produce. Before the said grant was utilized for the specific purpose it was parked in fixed deposits and the interest was earned and by the subsequent additional evidence produced by the assessee before

the Tribunal, it is further made clear that the State Government has categorically specified that any interest earned on those grants originally granted has to be considered as an additional grant and not an income of the assessee-Company.

15. As explained by the Apex Court, in Bongaigaon Refinery and Petrochemicals Ltd. case, (supra), in Tuticorin's case, the investment in deposits was made by the Company during its formative period by investments and in Bokaro Steels Ltd., case (supra) the inextricable link between the interest earned and the set up of the plant was established. Thus, in the present case we are of the view that this is not an investment made subsequent to the setting up of the project but this is the unutilized income parked in fixed deposits for a temporary period and inextricable link for the interest earned on the grants and the original grant made by the State Government to set up a project is established as in Bokaro Steel case.

16. Thus we are of the view that the facts and circumstances of the present case is squarely covered by Bokaro Steel Ltd.,(supra) and it is not the case of the revenue that the said interest earned on these fixed deposits was utilized by the Company for any other purpose other than the purpose for which the grants were made by the State Government. Even if we peruse the preamble to the Government Order dated 23.01.2007 by which the grant of Rs.10.00 crores is made by the Government of Karnataka it is clear that “in view of the National Horticultural Machine program implemented in Karnataka and major thrust given by the State Government for the development of horticultural sector, there is unlimited potentiality for export of horticultural produce, but the main constraint is lack of post harvest infrastructures viz., procurement centres, grading, washing, waxing, packing units, refrigerated transport, pre-cooling and cold storages, intermediate cold storages, processing units and export house. In order to harness the potentiality and to increase exports. Further KAPPEC

has proposed to create these infrastructure facilities in various parts of State in a phased manner and efforts will also be made to rope in funds from Government of India under the relevant scheme from different agencies". The object of the scheme is to facilitate the farmers and to promote export of horticultural produce.

17. Hence, the very purpose of granting Rs.10.00 crores to the assessee was to act as a nodal agency for implementation of the scheme. There is no profit motive as the entire fund entrusted and the interest accrued therefrom from deposits has to be utilised only for the purpose of the scheme originally granted. The whole of the fund belongs to the State exchequer and the assessee has to channelize them to achieve the objects of centrally sponsored scheme of infrastructural development as specified in the Government Order. Hence, interest on all these fixed deposits are considered to be capitalized and not revenue receipts to treat it as an income. The Tribunal considering these aspects and more

particularly, following the judgment of this Court in KUIDC case has held that the interest earned on these grants is not an income, which we do not find fault with.

18. In our view, there is no substantial question of law arising for our consideration and accordingly, appeal stands dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Ern/JT