आयकर अपीलीय अधिकरण, मुंबई **"ई"** खंडपीठ
Income-tax Appellate Tribunal -"E"Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद,न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and C.N. Prasad,Judicial Member
आयकर अपील सं./ITA/7544/Mum/2014,निर्धारण वर्ष /Assessment Years: 2008-09

ACIT-12(2)(1) Room No.363, 3rd Floor, Aayakar Bhavan, MK Road Mumbai-400 020.	Vs.	M/s. Etisalat DB Telecom Pvt. Ltd. **(Formerly known as Swan Capital Pvt. Ltd.)**; Mr. J.S. Aolomon & Co. 3rd Floor,Calcot House,8/10 M.P. Shetty Marg, Fort,Mumbai-400 023. **PAN:AAKCS 0136 Q**

(अपीलार्थी **/Appellant**) (प्रत्यर्थी / **Respondent**)

Revenue by: Shri N. Sathya Moorthy-DR
Assessee by: None
सुनवाई की तारीख / **Date of Hearing: 21.07.2016**
घोषणा की तारीख / **Date of Pronouncement:05.08.2016**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Assessee-company,engaged in the telecommunication services, filed its return of income on 27/09/2008,declaring total income at Rs. 3.53 crores.The return was processed u/s. 143 (1) of the Act. The AO completed the assessment u/s. 143(3) r.w.s.147 of the Act,determining the income of the assessee at Rs. 4.69 crores.

2.Effective ground of appeal is about deleting the addition of Rs. 1.16 crores,made by the AO on account of interest received from the fixed deposits with the Department of Telecommunication for obtaining Telecom Licences. During the assessment proceedings,the AO held that the interest received by the assessee was to be taxed under the head income from other sources.He relied upon the cases of Bokaro Steel Ltd.(236ITR315)Pink Star (72ITD137) and Tuticorin alkali Chemicals and Fertilisers Ltd (227 ITR 172).

3.Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority (FAA).Before him,it was argued that the assessee had returned its entire interest income,that it had excluded that component which was the result of the direct deployment of its fund in margin moneis placed with the banks for obtaining bank guarantees which were necessary for Telecom licences, that the funds in question were directly deployed for the purpose of commencement of its business,that the resultant interest receipt would have to be reduced from the project development cost and would not be charged to tax as income from other sources.After considering the submission of the assessee and the assessment order, the FAA held that the sole business of the assessee was to provide telecom services,that it had filed copies of the license agreement for provision of unified access services in Mumbai service area that had been issued by the Department of Telecommunication,that the license allowed it to roll-out Telcom services in Mumbai,that similar agreements were signed by it for the several Telcom Circles across India,that it was required to furnish a performance bank guarantee of Rs. 20 crores and financial bank guarantee of Rs.50 crores, that as per the agreement the quantum of performance bank guarantee was to be reduced after one year from the effective date of grant of license, that the financial bank guarantee was to continue at the same level throughout the subsistence of the contract, that bank guarantees were given by the banks to their regular customers usually after deposit of 10% of the margin money by way of a fixed deposit, that performance bank guarantees and financial bank guarantees,totalling to Rs.70 crores had been provided by three banks namely Punjab National Bank, Bank of Baroda and State Bank of India for obtaining licenses in the 13 circles throughout the country,that the total interest earned thereon during the previous relevant year to the AY.under consideration was Rs.1.30 crores,that the quantum of interest earned by it on account of fixed deposits with the banks placed by way of margin moneis for obtaining the bank guarantee worked out Rs.1.30 crores. The FAA held that facts of the cases, relied upon by the AO,were totally different from the facts of the case under appeal. He referred to the judgment of the Honorable Supreme

Court in the case of Karnal Co-Operative Sugar Mills Ltd.(243 ITR 2)and held that interest received by the assessee on the margin monies placed in FD.s with the banks for obtaining bank guarantees for fulfilling the preconditions laid down for issue of Telcom licenses was a capital receipt and hence not chargeable to tax,that the assessee's treatment of the same of setting it off against project development expenses was indeed the correct treatment.Finally, he allowed the appeal filed by the assessee.

4.During the course of hearing before us, the Departmental Representative(DR) supported the order of the AO.None appeared on behalf of the assessee,as stated earlier.

5.We have perused the material available on record. We find that the assessee had to furnish performance bank guarantee as well as financial bank guarantee, that three nationalised banks had provided the guarantees totalling to Rs.70 crores to the assessee for obtaining licence in 13 circles throughout the country, that the interest earned thereon amounted to Rs. 1.30 crores, that the FAA held that the interest earned by the assessee was for fulfilling the preconditions laid down for issue of Telcom licenses.In our opinion,he had rightly held that it was a capital receipt and same had to be set off against project development expenses.We also hold that his order does not suffer from any legal infirmity. Therefore,upholding his order,we decide the effective ground of appeal against the AO.

As a result, appeal filed by the AO stands dismissed.
फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 5th August,2016.
आदेश की घोषणा खुले न्यायालय में दिनांक 5 अगस्त ,2016 को की गई ।

Sd/-	Sd/-
(सी. एन. प्रसाद / **C.N. Prasad**)	(राजेन्द्र / **Rajendra**)
न्यायिक सदस्य / **JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांकDated : 05.08.2016.
Jv.Sr.PS.

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी
3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त
5.DR "E " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई **/ITAT, Mumbai.**