

**IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH, NAGPUR**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND SHRI RAM LAL NEGI, JUDICIAL MEMBER..**

I.T.A. No. 224/Nag/2015
Assessment Year : 2012-13.

Asstt. Commissioner of Income-tax,
Circl-2, Nagpur.

Vs. M/s Sanvijay Rolling and
Engineering Ltd., Nagpur.
PAN AACCS0217J.
Respondent.

Appellant.

Appellant by : Shri A.R. Ninawe.
Respondent by : Shri K.P. Dewani.

Date of Hearing : 30-03-2017.
Date of Pronouncement : 30th March, 2017.

ORDER.

PER SHAMIM YAHYA, A.M. :

This appeal by the Revenue is directed against the order of learned CIT(Appeals)-4, Nagpur dated 07-05-2015 and pertains to assessment year 2012-13. The ground of appeal reads as under :

“On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in holding that the sales tax incentives receipts of Rs.8,91,13,000/- is a capital receipt and hence not chargeable to tax.”

2. Brief facts of the case are as under :

The return of income declaring total income of Rs.18,86,30,870/- was filed on 29-09-2012. During the course of assessment proceedings, it was noted by the AO that the assessee had received Industrial Promotion Subsidy amounting to Rs.891.13 lacs and that the auditor in it explanatory note to the final account had given the following remarks :

“ The company has been granted an Eligibility Certificate for Mega Project under Package Scheme of Incentive – 2001 on fulfilment o various criterias stipulated under the scheme. As per the Eligibility Certificate the company is entitled to interalia, industrial promotion subsidy equivalent to 100% of eligible investment made within 21-09-2015 to 20-09-2008 or the extent of tax paid to the State Government within a period of seven years, whichever is lower. During the year the company has received an amount of Rs.8,91,13,000/- as Industrial Promotion Subsidy. Based on the professional advice received by it, the management of the company is of the vie that this subsidy is a capitl on which income tax is not payable and accordingly it has been treated as reserve in the financial statement.”

3. The AO required the assessee to furnish various details of evidences to examine the nature of the said receipts and as to whether the same was required to be treated as revenue receipts and brought to tax.

4. The assessee explained that it had set up an Industrial Undertaking in the Butibori Industrial area and it was a mega project in terms of Package Scheme of Incentives (PSI) 2001 of the Government of Maharashtra and that the preamble of the scheme requires incentives to be provided for setting up such project in view of employment generated and for dispersal of industry. It was further submitted that since the purpose of the subsidy was to provide incentive for setting up industry and therefore it was capital receipt not chargeable to tax. The assessee placed its reliance on various case laws including that from ITAT, Nagpur in assessee's own case.

5. The AO considered the submissions of the assessee but did not agree with the same and was of the view that the various decisions relied upon by the assessee related to “Sales Tax Incentive” and “Deferment of Sales Tax Collected” while in the case under consideration the assessee had directly received a sum of Rs.891.13 lacs from the State Government of Maharashtra. The AO further noted that the subsidy is provided to the assessee on the basis of

its capacity to generate employment and is not meant for installation of any capital asset and by applying test of usage, the amount received by the assessee can not be treated as capital in nature and was required to be brought to tax as a revenue receipt. The AO therefore added an amount of Rs.8,91,13,000/- to the income of the assessee.

6. Upon assessee's appeal, learned CIT(Appeals) referred to several case laws including i) CIT vs. Ponni Sugars & Chemicals Ltd., ii) CIT vs. Bougainvillea Multiplex Entertainment Centre (P) Ltd. (2015) 55 txmann.com. 26 (Delhi), and iii) CIT vs. Chaphalkar Brothers 351 ITR 309 (Bom.). Referring to the above, learned CIT(Appeals) concluded as under :

“6.6 In all the above cases, the incentives received by the appellant for setting of industry were held to be capital in nature and it has been held that what is important is the purpose of the incentive/subsidy and a mere change in the method of disbursement cannot be lead to a different treatment and the said receipt can not be brought to tax as a revenue receipt. The Special Bench of the Tribunal Reliance Industries Ltd. (Supra) relying on the principles laid down by Supreme Court in the case of Sahney Steel & Press Works Ltd. (supra) came to the conclusion that since the incentives were given for bringing about addition to necessary infrastructure in developing the backward area, it would be in the nature of capital receipt not liable to tax. The aforesaid decision of the Special Bench has been rendered on identical facts and is on all fours with the fact of the assessee's case. This is because the objectives of the successive PSIs have remained identical in it successive avatars. The purpose of granting incentive is clearly only to provide an incentive for establishment of new industries in the undeveloped regions or to expand its existing units of the State of Maharashtra. The intention is not to increase the viability of the eligible units but to promote development of further industry and infrastructure in region and to provide employment.

6.7 Also, as held by the Honorable Supreme Court, the character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases, one has to apply the purpose test. The point of time at which the subsidy is paid, the form in which it is paid or its source is immaterial. The Honorable Supreme Court held that the crucial aspect was the object of the scheme and if the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account and on the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account. It held that it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy and the form of the mechanism through which the subsidy is given is irrelevant.

6.8 As discussed above, in the appellant, the purpose of granting incentive is clearly only to provide an incentive for establishment of new industries in the undeveloped regions or to expand its existing units of the State of Maharashtra. The variation in methodology of availment of various incentives under the scheme will not alter the character of receipt being capital in nature. The ratio laid down by the various binding judicial pronouncements discussed hereinabove squarely applies to the facts of the case. Respectfully following the same, I hold that the amount received by the appellant during the year under consideration as promotional subsidy under the PSI of Maharashtra in the capital field and not liable to tax. In view of the above facts, the action of the Ld. AO of treating the said amount of Rs.91,13,000/- as revenue receipts is erroneous and consequently the addition made by the Ld. AO in this regard is therefore hereby deleted. These grounds are therefore allowed.”

7. Against the above order the Revenue is in appeal before us.

8. We have heard both the counsel and perused the records. Learned D.R. relied upon the order of the AO. Learned counsel of the assessee supported the

order of the learned CIT(Appeals). He further submitted that the issue is covered in favour of the assessee by several case laws including that of the ITAT, Nagpur Bench in assessee's own case as under :

- 1) ITA No. 255/Nag/2012 in the case of assessee vide order dated 20-10-2014.
- 2) ITA No. 179 to 183/Nag/07 in the case of assessee vide order dated 29-10-2007.
- 3) (2013) 351 ITR 309 (Bom) CIT vs. Chapalkar Brothers.
- 4) (2014) 364 ITR 88 (Bom) CIT vs. Kirloskar Oil Engines Ltd.
- 5) (2016) 138 DTR 036 (SC) CIT & Anr. Vs. Shree Balaji Alloys & Ors.
- 6) (2011) 333 ITR 0335 (Jammu & Kashmir) Shree Balaji Alloys & Ors. vs. CIT & Or.
- 7) ITAT order in ITA No. 3428/Mum/2016 in the case of Bhagyalaxmi Rolling Mills P. Ltd. vs. Dy. CIT.

9. Upon hearing both the counsel and perusing the records we find that this Tribunal in assessee's own case has decided the issue in favour of the assessee vide order dated 20-10-2014 as under :

“ We have heard the arguments and have perused the material and case laws cited before us. The issue has been dealt with by the ITAT, Nagpur Bench in so many cases, including the assessee's own cases in ITA Nos. 179 to 183/Nag/2007, covering assessment years 1999-2000, 2002-03 to 2005-06, wherein it was held as under :

"It is clear before us that the scheme is for establishing the industries in undeveloped and underdeveloped districts of Maharashtra . State. The sales tax incentive is one of the incentive granted under the scheme. The implementation of the scheme is within purview of Government of Maharashtra and competent authority issues necessary eligibility certificate. It is admitted fact that the sales tax incentives were paid to the assessee as per eligibility certificate issued

1. *by the competent authority. Therefore, the purpose, preamble and objects of the package scheme prevail over the utilization*

of incentive. It is admitted fact before us that the sales tax incentive is for the dispersal of minutes from Mumbai, Thane and Pune Districts for the establishment of industries in undeveloped and underdeveloped districts of Maharashtra State

27. The Assessing Officer has relied on the decisions, i.e. 286ITR 1{P&H}, 205 CTR304(P&H), 205 CTR 334(P&H), 257 ITR 241,(Del), 251 ITR 427{SC) and 251 ITR 843(Mad) while concluding that the sales tax incentives are in revenue nature and taxable. But no where the AO has discussed that the relevant schemes under consideration in those decisions were similar to package scheme of incentives of Maharashtra which the sales tax subsidies are allowed. The decisions relied upon by the AO are also considered by the Ld. CIT{A) while treating the sales tax incentive as capital receipt on the basis of package scheme applicable announced by the Govt. of Maharashtra under which the subsidy is regulated by distinguishing the above decisions.

28. The sales tax incentives are in the nature of incentives for industrial development, therefore, are in the scheme of capital subsidy. Our view gets support-from: orders reported in 82 TT J 765 (Mum) (SB) and 286 ITR 635, umere.Hon'ble Court opined that incentives/ subsidies are in capital nature.

29. Therefore, while respectfully following the decision of the Special Bench of ITAT Mumbai reported in ~8 ITR 273 (Mumj(SB), and other orders of the Ld. Bench ofITAT, Nagpur in.ITA No. 191/Nag/Ol etc. order dated 20.2.04, ITA No. 137/Nag/99 order dated 22.7.2003, ITA No. 107/Nag/06 order dated 11.8.06, and in ITA No. 416/Nag/2001; 239/Nag/02, 7 and 8/Nag/2002, 107/Nag/06 order dated 11.8.2006 which are binding on the Bench to follow and Calcuttq."Benr;h, order . in Maithari Alloys Ltd. & Ambuja Cement, we are of the opinion that the sales tax incentives are in the nature of capital subsidy, It is incentive for setting up of industries in undeveloped & Underdeveloped districts of Maharashtra State".

8. The ITAT in assessee's own cases have held that sales tax incentive is capital receipt and therefore, not taxable.

9. Respectfully, therefore, following the decision as rendered in the case of the assessee, as extracted here in above, we are of the view that there is no infirmity in the order of the CIT(A) on the impugned issue of sales tax incentive, collected at Rs. 93,78,932/ -. Consequentially, we reject the ground taken by the department. ”

10. Since the ITAT in assessee's own case has decided the issue in favour of the assessee and it is not the case that Hon'bl jurisdictional High Court has reversed the decision of ITAT, following the precedent as above we decide the issue in favour of the assessee. Accordingly we do not find any infirmity in the order of learned CIT(Appeals) and hence we uphold the same.

11. In the result, this appeal by the Revenue stands dismissed.

Order pronounced in the Open Court on this 30th day of March, 2017.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER.

Nagpur,
Dated: 30th March, 2017.

Copy forwarded to :
2. M/s Sanvijay Rolling and Engineering Ltd. 9, Imambada, Opposite Bazar Steels Nagpur.
3. AC.I.T., Circle-2, Nagpur.
4. CIT(Appeals)-4 Nagpur.
5. C.I.T.-2, Nagpur.
6. D.R., ITAT, Nagpur.
7. Guard File

True Copy

By Order

Assistant Registrar,
Income Tax Appellate Tribunal,
Nagpur Bench, Nagpur.

Wakode.