

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 222/KOL/ 2012
Assessment Year : 2006-2007**

***Joint Commissioner of Income Tax (OSD),.....Appellant
Circle-10, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, 3rd Floor,
Kolkata-700 069***

-Vs.-

***Stadmed Private Limited,.....Respondent
Block-AA-21, Sector-1, Salt Lake City,
Kolkata-700 061
[PAN : AAJCS 1122 P]***

Appearances by:

*Shri S.M. Sarfarazut Tauheed, JCIT, Sr. D.R., for the Department
Shri Subash Agarwal, Advocate, for the assessee*

Date of concluding the hearing : November 19, 2015

Date of pronouncing the order : November 27, 2015

O R D E R

Per Shri P.M. Jagtap:-

This appeal filed by the Revenue is directed against the order of Id. Commissioner of Income Tax (Appeals)-XII, Kolkata dated 25.11.2011 for the assessment year 2006-07.

2. In Ground No. 1, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the addition made by the Assessing Officer to the total income of the assessee on account of Industrial Promotional Assistance received from Government of West Bengal.

3. The assessee in the present case is a Company, which is engaged in the business of manufacturing of Allopathic Medicine. The return of income for the year under consideration was filed by it on 30.11.2006 declaring total income of Rs.39,63,242/-. In the said return, a sum of Rs.18,73,680/- received under the West Bengal Industrial Promotion Scheme for the expansion of its activity, modernization and improving their making capabilities was claimed to be exempt by the assessee-company being in the nature of capital receipt. During the course of assessment proceedings, it was brought to the notice of the Assessing Officer by the assessee that a similar issue has already been decided by the Tribunal in its own case for A.Ys. 1997-98, 1998-99 and 2001-02 by holding the similar amount received under the same Scheme as capital receipt. It was, however, noticed by the Assessing Officer that as per the relevant Scheme of the West Bengal Government, the assistance received by the assessee was liable to be adjusted against the revenue expenditure that is commercial taxes. He also noted that the assessee has not reduced the value of its capital asset by the impugned amount while claiming the depreciation for the year under consideration. The Assessing Officer also noted that there was no obligation on the assessee to apply the amount in question for a particular purpose neither the scheme required that utilization certificate should be submitted by the assessee. He, therefore, held that it was improper to consider the said amount as capital in nature and relying on the decision of the Hon'ble Supreme Court in the case of Sahney Steel & Press Works limited -vs.- CIT reported in 288 ITR 253, he considered the amount of Rs.18,73,680/- received by the assessee as revenue in nature. Accordingly, the said amount was added by him to the total income of the assessee.

4. On appeal, the Id. CIT(Appeals) deleted the addition made by the Assessing Officer on this issue relying, *inter alia*, on the decision of the Tribunal rendered in assessee's own case for the earlier years, wherein a

similar amount received by the assessee under the same Scheme was held to be capital receipt not chargeable to tax.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. Although the Id. D.R. has agreed that this issue involved in Ground No. 1 of the Revenue's appeal is squarely covered in favour of the assessee, *inter alia*, by the various decisions of the Tribunal in assessee's own case, he has contended that once the amount in question is treated as capital receipt, the same is required to be reduced for working out the written down value for the purpose of claiming depreciation thereon. In support of this contention, he has relied on Explanation 10 to Section 43(1) read with proviso thereto. The said Explanation along with the proviso thereto is extracted below:-

“Explanation 10 : Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee:

Provided that where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee”.

6. The Id. Counsel for the assessee, on the other hand, has relied on the decision of the Coordinate Bench of this Tribunal in the case of Universal Cables Limited (I.T.A. No. 679/KOL/2013 & Others dated 27.02.2015), wherein it was held that the expression “met directly or indirectly” as analyzed by the Hon'ble Supreme Court in the case of P.J. Chemicals Limited reported in 210 ITR 830, even after insertion of

Explanation 10 to Section 43(1) of the Act, would cover the case where the subsidy or other grant is given to offset the cost of an asset and not in the case where the subsidy is received merely to accelerate the industrial development of the State. It is, however, observed that in the case of Universal Cables Limited (supra), the subsidy was received by the assessee under the Scheme framed by the State of Madhya Pradesh, whereas the amount in question received by the assessee in the present case, is received under different Scheme framed by the Government of West Bengal. It is, therefore, necessary to analyze and look into the said Scheme of West Bengal to find out or ascertain as to whether Explanation 10 to Section 43(1) read with proviso thereto is applicable thereto or not. Since this exercise has not been specifically done either by the Assessing Officer or by the Id. CIT(Appeals), we restore this issue to the file of the Assessing Officer for this limited purpose. Ground No. 1 of the revenue's appeal is accordingly treated as partly allowed for statistical purposes.

7. In Ground No. 2, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the addition made by the Assessing Officer to the total income of the assessee on account of excise duty pertaining to finished goods.

8. During the course of assessment proceedings, it was noticed by the Assessing Officer that the excise duty relatable to closing stock of finished goods has not been taken into account by the assessee while valuing the closing stock. He, therefore, required the assessee to explain as to why the amount of excise duty relatable to the closing stock of finished goods should not be added in accordance with the provisions of section 145A. In reply, it was explained by the assessee that the excise duty is payable only at the time of removal of the stock and the same, therefore, is not liable to be included in the value of closing stock of finished goods even as per the provisions of section 145A. It was also pointed out that excise duty payable on finished goods at the time of removal was not claimed as expenditure by debiting it to the Profit &

Loss Account. This explanation of the assessee was not found acceptable by the Assessing Officer and relying on Explanation to Section 145A, he added the amount of Rs.47,61,851/- to the total income of the assessee by increasing the value of closing stock of finished goods.

9. On appeal, the Id. CIT(Appeals) deleted the addition made by the Assessing Officer on this issue by relying on the decision dated 17.07.2006 of the ITAT, Allahabad Bench in the case of Shyam Biri Works Limited -vs.- ACIT reported in 108 ITD 489.

10. After considering the rival submissions and perusing the relevant material available on record, it is observed that this issue involved in Ground No. 2 of the Revenue's appeal is squarely covered, *inter alia*, by the decision of the Hon'ble Madhya Pradesh High Court in the case of ACIT -vs.- D & H Secheron Electrodes (P) Limited [2008] 173 Taxman 188, wherein it was held that it is only when tax, duty, cess or fee is actually paid or incurred by the assessee in bringing the goods to the place of its location that the said amount forms part of value of stock and the excise duty, which had not been paid by the assessee on goods lying in stock, there is no justification on the part of the Assessing Officer in adding such excise duty to the value of closing stock even as per the provisions of section 145A. Respectfully following the said decision of the Hon'ble Madhya Pradesh High Court, we uphold the impugned order of the Id. CIT(Appeals) deleting the addition made by the Assessing Officer on account of excise duty pertaining to finished goods and dismiss Ground No. 2 of the Revenue's appeal.

11. In Ground No. 3, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the addition made by the Assessing Officer on account of interest attributable to the loans and advances given by the assessee-Company to its Directors, which were otherwise than for business purposes.

12. From the perusal of the details of loans and advances, it was noticed by the Assessing Officer that the assessee has given advances of Rs.11,80,463/- to its Directors and advances of Rs.28,04,531/- to others for other than business purposes. Since interest @ 15% was paid by the assessee on the borrowed funds, disallowance out of interest to the extent of Rs.4,78,199/- was made by the Assessing Officer as calculated at the rate of 12% on the amount of Rs.39,84,994/- advanced by the assessee for other than business purposes.

13. On appeal, the Id. CIT(Appeals) deleted the disallowance made by the Assessing Officer out of interest expenditure after having found that the assessee-Company had its own fund of Rs.5.33 crores in the form of share capital and reserve at the relevant time to give the advances in question for other than business purpose and there was no nexus established by the Assessing Officer between the borrowed funds and such advances. He also found that a similar disallowance made by the Assessing Officer on account of interest was deleted by the Tribunal in assessee's own case for A.Y. 2001-02.

14. We have heard the arguments of both the sides and also perused the relevant material available on record. As pointed out by the Id. Counsel for the assessee from the relevant balance-sheet of the assessee placed at page no. 4 of the paper book, the assessee-company during the year under consideration had own funds of Rs.5.45 crores in the form of share capital and reserves and the same being more than sufficient to give the advances of Rs.39,84,994/- for other than business purposes, there was no question of making any disallowance out of interest as the said advances were clearly given by the assessee out of its own funds and there was no utilization of borrowed funds by the assessee to give such advances. It is thus clear that the issue involved in the year under consideration is similar to the one involved in assessee's own case for A.Y. 2001-02, wherein relief was allowed by the Tribunal to the assessee and respectfully following the same, we uphold the impugned order of the

ld. CIT(Appeals) deleting the disallowance made by the Assessing Officer on account of interest. Ground No. 3 of the Revenue's appeal is accordingly dismissed.

15. In the result, the appeal of the Revenue is treated as partly allowed for statistical purposes.

Order pronounced in the open Court on November 27, 2015.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 27th day of November, 2015

Copies to : (1) ***Joint Commissioner of Income Tax (OSD),
Circle-10, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, 3rd Floor,
Kolkata-700 069***

(2) ***Stadmed Private Limited,
Block-AA-21, Sector-1, Salt Lake City,
Kolkata-700 061***

(3) *Commissioner of Income-tax (Appeals)-XII, Kolkata*
(4) *Commissioner of Income Tax, Kolkata*
(5) *The Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.