

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, बी, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री एन. के. प्रधान, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and
Shri N.K. Pradhan, Accountant Member**

**ITA NO.7120/Mum/2013
Assessment Year: 2010-11**

M/s Manohar Processors Pvt. Ltd. (Dicitex Home Furnishings Pvt. Ltd.), Shop No.2, Kakad Air Conditioner Market, Kalbadevi Road, Mumbai-400002	बनाम/ Vs.	DCIT-8(2), Mumbai
(निर्धारिती /Assessee)		(राजस्व /Revenue)
P.A. No. AACCM7535R		

निर्धारिती की ओर से / Assessee by	Shri Hariom Tulsyan
राजस्व की ओर से / Revenue by	Shri Purushottam Kumar- DR

सुनवाई की तारीख / Date of Hearing :	15/11/2016
आदेश की तारीख /Date of Order:	15/11/2016

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 09/10/2013 of the Ld. First Appellate Authority, Mumbai, disallowing a sum of Rs.3,37,24,199/- on account of subsidy received from Government of India under Technology Upgradation Fund Scheme (TUF Scheme) ignoring case laws, relied upon by the assessee as mentioned in the ground of appeal itself.

2. During hearing of this appeal, the ld. counsel for the assessee, Shri Hariom Tulsyan claimed that the impugned issue is covered by the decision of the Tribunal in the case of assessee itself for Assessment Year 2012-13 order dated 23/09/2016 (ITA No.4375, 2147/Mum/2015) and also another decision of the tribunal in the case of M/s SVG Fashions Ltd. vs DCIT (ITA No.5644/Mum/2011) order dated 23/12/2015. This factual matrix was not controverted by the ld. DR, Shri Purushottam Kumar.

2.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion from the aforesaid order dated 23/09/2016, in the case of assessee itself for ready reference and analysis:-

“The above appeals have been filed by the Revenue. The relevant assessment years are 2011-12 and 2012-13. The appeals are directed against the order of the Commissioner of Income Tax (Appeals)-16, Mumbai, and arise out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (‘the Act’). In this batch of appeals, the controversy raised being similar, they were heard analogously and are disposed of by a common order.

2. The first ground raised by the Revenue in this appeal is that the ld. CIT(A) erred in deleting the addition made by the Assessing Officer (AO) on account of interest subsidy amounting to Rs.2,84,21,657/- for the A.Y. 2011-12 and Rs.2,48,57,810/- for the A.Y. 2012-13 treating the same as capital receipt by relying on the Supreme Court decision in the case of Sahney Steel and Press Works Ltd. vs. CIT 228 ITR 253 (SC), without countering the findings of the AO in Para 5.5 of the assessment order that assessee had received subsidy in the form of 5% reduction in the rate of interest and interest being a revenue expenditure allowable under the Act, any subsidy relating to interest is also to be treated as revenue item.

3. The nature of the business of the assessee-company is manufacturing and trading of cloth and yarn. The assessee availed Technology Upgradation Fund Scheme (TUF) formulated by the Government of India and received interest subsidy of Rs.2,84,21,657/- during the A.Y. 2011-12 and Rs.2,48,57,810/- during the A.Y. 2012- 13. The same was claimed by the assessee as capital receipt by transferring it to the capital reserve account of TUF Interest. The assessee submitted before the AO that the TUF was introduced for the purpose of encouraging the acquisition of technologically advanced textile machineries by way of extending loans for the specified purpose through commercial banks / financial institutions on subsidized rates of interest. The AO referred to the decision of Hon’ble Supreme Court in the case of Sahney Steel and Press Works Ltd. (supra) stating that government subsidy received by any, if not reduced from the capital assets for depreciation purpose should be treated as revenue subsidy and should be brought

to tax. He also relied on the above decision stating that subsidy granted to an assessee after it started production in the form of refund of sale tax, recoupment of power charges and exemption from the payment of water charges was revenue receipt. The payment of subsidy to assist an assessee in carrying on trade or business as distinct from the subsidy to help the assessee to set up an industry or complete a project is production incentive or operational subsidy and is not capital subsidy and hence as per the AO, it is chargeable to tax as revenue receipt. He also relied upon the decision of Hon'ble Supreme Court in the case of CIT vs. P. J. Chemicals (1994) 210 ITR 830 (SC) wherein the dispute was whether the capital subsidy went to reduce the actual cost of plant and machinery for the purpose of depreciation. He noted that the ratio of the above decision has since been negated by inserting Explanation -10 below section 43(1) by the Finance (No. 2) Act, 1998 w.e.f. 01.04.1999. The AO also found that the assessee has transferred Rs.2,84,21,657/- during the A.Y. 2011-12 and Rs.2,48,57,810/- during the A.Y. 2012-13 from the P & L appropriation to the credit of capital reserve account and claimed the same as deduction from the taxable income. As the assessee has not reduced the above from the capital assets for depreciation purpose, the AO followed the decision in the case of Sahney Steel and Press Works Ltd. (supra) and made the addition to the total income of the above amount in the respect the A. Y.s treating the same as revenue receipt instead of capital receipt shown by the assessee.

4. The ld. CIT(A) having gone through the order of the AO and submission of the assessee during the course of appellate proceedings before him observed that the issues is directly covered by the judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Sham Lal Bansal (2011) 11 Taxman.com 369 wherein the issue was whether subsidy received for payment of loan taken for building and plant machinery under TUF Scheme of the Government is a capital receipt or revenue receipt. In the above decision, their Lordships relied on the judgment of the Hon'ble Supreme Court in the case of Ponni Sugar and Chemicals Ltd. (2008) 306 ITR 392

(SC) and held that the subject subsidy is a capital receipt. The ld. CIT(A) followed the above decision and allowed the appeal filed by the assessee before him.

5. Before us, the ld. DR supported the order passed by the AO. Specific reference was made by him to the decision in the case of Sahney Steel and Press Works Ltd. (supra).

6. Before us, the ld. Counsel of the assessee relied on the order of the ld. CIT(A). Specific reference was made by him to the decision in the case of (i) CIT vs. Sham Lal Bansal (supra) (ii) M/s SVG Fashions Ltd. vs. DCIT-4(3), ITAT, Mumbai 'E' Bench (ITA No.8565/M/2010 & ITA No. 296/M/2012 dated 23/12/2005) and (iii) Gloster Jute Mills Ltd vs. ACIT (2014) 33 ITR (Tribunal) 322 (Kol).

7. We have considered the rival submissions and perused the relevant material on record. We begin with the scheme as formulated by the Textile Ministry, Government of India for the benefit of the textile industry in India. The salient feature of the scheme especially to the character of the incentive/subsidy of TUFs is to be inferred from its 'Objective ' as stated at the preamble which is produced below:

In the light of the foregoing, it has been felt necessary to make operational a focussed and time-bound Technology Upgradation Fund Scheme (TUFs) which would provide a focal point for modernisation efforts through technology upgradation in the industry. The main feature of the TUF Scheme would be a 5% reimbursement on the interest actually charged by the identified financial institutions on the sanctioned projects."

7.1 Now we shall turn to the decision relied on by the ld. DR. In Sahney Steel and Press Works Ltd. (supra), the following has been held:

"The payments in the nature of subsidies were made only after the industries have been set up. Payments were not made for the purpose of setting up of the industries. The payments were to be made only if

and when the assessee commenced its production. The said payments were made for a period of five years calculated from the date of commencement of production in the assessee's factory. The subsidies were operational subsidies and not capital subsidies. Therefore, such subsidies could only be treated as assistance given for the purpose of carrying on of the business of the assessee and the same were of revenue character."

7.2 We then turn to the decisions relied on by the ld. Counsel of the assessee. In the case of Sham Lal Bansal (supra), the assessee was engaged in manufacture and sale of woollen garments. He received subsidy for a payment of loan taken for building and plant and machinery under the Credit Linked Capital subsidy Scheme under TUFs of Ministry of Textile and claimed the same as capital receipt. The AO, however, treated the same as a revenue receipt and added to the income of the assessee. On appeal, the Commissioner (Appeals) upheld the plea of the assessee and same was confirmed by the Tribunal observing that the objective of the subsidy scheme was to enhance the technology apparatus of the assessee by assisting in acquiring machinery and the subsidy so received was utilized for repayment of loans taken by the assessee to set up the new unit, as was the intention of the subsidy. The Hon'ble High Court held the following:

"To sustain and improve the competitiveness and overall long term viability of the textile industry, the concerned Ministry of Textile adopted the TUFs scheme, envisaging technology upgradation of the industry. Under the scheme there were two options, either to reimburse the interest charged by the lending agency on purchase of technology upgradation or to give capital subsidy on the investment in compatible machinery. In the instant case, the assessee had taken term loans for technology upgradation and subsidy was released under agreement with Small Industry Development Bank of India. [Para 6]

For determining whether subsidy payment was 'revenue receipt' or 'capital receipt,' character of receipt in the hands of the assessee has to be determined with respect to

the purpose for which subsidy is given by applying the purpose test. [Para 7]

The matter was covered by judgment of the Supreme Court in CIT v. Ponni Sugars & Chemicals Ltd. [2008] 306 ITR 392 /174 Taxman 87 against the revenue and, therefore, no substantial question of law arose.

7.3 In Ponni Sugars and Chemicals Ltd. (supra) ,it was held that the test is the character of receipt in the hands of the assessee, so that where the object of the subsidy is to enable to the assessee to run the business more profitably, it would be taxable, but where it is to enable the assessee to set up a new unit or expand its existing unit it should not be taxable.

7.4 In M/s SVG Fashions Ltd. (supra), the issue before the ITAT 'E' Bench Mumbai, was whether the interest subsidy granted under TUF Scheme was revenue or capital in nature. The Tribunal followed the judgment in Ponni Sugars and Chemicals Ltd. (supra) and directed the AO to treat the subsidy as capital in nature. We may mention here that similar TUF Scheme is in dispute in the instant appeal.

7.5 In Gloster Jute Mills Ltd. (supra), the assessee received subsidy from the Central Government under the TUF Scheme by way of interest refund. In computing the assessable income, the assessee deducted the amount on the ground that the subsidy was capital in nature. The AO held that the subsidy was revenue in nature and had to be added to the total income of the assessee as a revenue receipt. The Commissioner (Appeals) confirmed this. On appeal, the ITAT held that in order to sustain competitiveness in the domestic as well as international market and over all long-term viability of the industry, the Ministry adopted the TUF Scheme envisaging technology upgradation of the industry and therefore the subsidy received in that regard was capital in nature.

8. The present factual matrix is to be tested on the anvil of the above enunciation of law. In the light of the decision in the case of Sham

Lal Bansal, M/s SVG Fashions Ltd. and Gloster Jute Mills Ltd. referred here-in-above and the facts being similar, we uphold the order passed by the ld. CIT(A) for the A.Y. 2011-12 and A.Y. 2012-13.

9. In the result, the appeal filed by the Revenue for the above two assessment years are dismissed.”

It is noted that in the aforesaid order, on similar issue of interest subsidy, and identical facts, the Tribunal duly considered various case laws including Sahney Steel and Press Works Ltd. vs CIT 228 ITR 253 (SC), CIT vs P.J. Chemicals (210 ITR 830)(SC), CIT vs Shyam Lal Bansal (2011) 11 taxman.com 369 (P & H) and various other decisions, it was held that the subsidy received was capital in nature, the Tribunal dismissed the appeal of the Revenue. Following the aforesaid decision and the ratio laid down, on identical fact in the case of M/s SVG Fashions vs DCIT (supra), the appeal of the assessee is allowed.

Finally, the appeal of the assessee is allowed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 15/11/2016.

Sd/-

(N.K. Pradhan)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 15/11/2016

Shekhar, P.S/निजी सचिव

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai,