

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

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No 1217/MUM/2015
Assessment Year: 2011-12**

M/s. SVG Fashion Limited (Formerly known as Deepak Suiting Ltd.), 235,Shree Venkateshwar Bhawan, 3 rd Floor, Kalbadevi Road, Mumbai- 400 002. PAN:- AAACD1621K	Vs.	The Addl. CIT Range- 4(3), Mumbai.
(Appellant)		(Respondent)

Appellant by : None
Respondent by : Shri. A.K.Kardam

Date of Hearing: 18/10/2016
Date of Pronouncement: 26/10/2016

ORDER

PER RAM LAL NEGI, JM

The appeal has been filed by the assessee against order dated 05/12/2014 passed by the CIT(Appeals)-9 Mumbai for the Asst. Year 2011-12, whereby the Ld. CIT(A) dismissed the appeal preferred by the assessee against assessment order dated 03/01/2014 passed u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The case was called for hearing, however, neither the appellant/assessee himself nor any authorized representative appeared on his behalf. We find that the notice has been served upon the assessee and well in time before the date

of hearing. Hence, we are satisfied that the assessee has not appeared despite service of notice which gives rise to the conclusion that the assessee is no more interested in pursuing the appeal. Accordingly, we decided to proceed *ex-parte* against the appellant and dispose of the appeal on the basis of material available on record, after hearing the departmental representative.

3. The assessee has challenged the impugned order on the following effective grounds of appeal:-

1) *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the order passed by the Ld. A.O u/s 143(3) of the Income Tax Act, 1961 by disallowing a sum of Rs. 89,01,767/- on account of subsidy received by the appellant company from the Government of India under the Technology Upgradation Fund Scheme (TUF Scheme) without appreciating the contention of the appellant that the same is capital receipt instead of a revenue receipt and therefore liable to be excluded from the total taxable income of the relevant year.”*

2) *“On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in not referring to the cited judgments of the Assessing Officer of the assessee company, in light of the pronouncement of the Hon’ble Gujarat High Court in the matter of Dattani and Co vs. ITO in tax appeal nos. 847 to 849 or 2013.”*

4. Brief facts of the case are that the appellant filed its return of income declaring the total income of Rs. 10,43,19,210/-. The A.O after hearing the assessee made addition of Rs. 89,01,767/- claimed as interest subsidy, disallowance of Rs. 8,580/- u/s 14A r.w.s 8D and Rs. 48,916/- as AIR unreconciled thereby assessed the total income of Rs. 11,34,10,893/-. The assessment order was challenged before the Ld. CIT(A) however, the Ld. CIT(A) dismissed the appeal and confirmed the findings of assessment order. The only grievance of the assessee in the present appeal is pertaining to interest subsidy

granted under Technology Up-gradation Fund Scheme and the issue to be adjudicated to interest subsidy is revenue receipt or capital receipt.

5. We have heard Ld. DR who relying on the findings of the CIT(A) and submitted that interest subsidy received by the assessee which resulted into reduction in the interest expenditure which is revenue in nature, therefore, the Ld. CIT(A) rightly in treating the interest subsidy as revenue receipt rather than capital receipt.

6. We notice that the co-ordinate Bench in assessee's own case for A.Y. 2005-06, 2007-08 to 2009-10 has decided the identical issue in favour of the assessee holding as under:-

“14. The issue of subsidiary receipt under TUF Scheme is squarely covered by the decision of coordinate bench in the case of Gloster Jute Mills Ltd. {2014} 33 ITR (Trib) 322 (Kol), wherein the assessee received subsidy from the Central Government under the “technology upgradation fund 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 in the total income of the assessee as a revenue receipt. The CIT(A) confirmed this. On further appeal, the Tribunal held that in order to sustain competitiveness in the domestic as well as international markets and overall long-term viability of the industry, the Ministry adopted the “technology upgradation fund scheme” envisaging technology upgradation of the industry. Therefore, the subsidy received in that regard was capital in nature. The precise observation of the bench was as under:-

“7. We have heard the rival submissions and perused the material available on record. Ld. Counsel of the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of the Hon“ble Punjab & Haryana High Court in the case of CIT –

vs.- Sh. Sham Lal Bansal in ITA No. 472 of 2010, wherein it had been held that interest subsidy received under TUF Scheme is capital in nature. Ld. Counsel for the assessee has further submitted that this issue is covered in favour of the assessee by the decision of the Hon"ble Apex Court in the case of CIT –vs.- Ponni Sugars & Chemicals Ltd. reported in (2008) 306 ITR 392 (SC) wherein it has been held that it is the purpose of the incentive which decides its nature and not the modality or the source thereof. That this issue is also favourably covered by the decision of Hon"ble jurisdictional High Court in the case of CIT –vs.- Rasoi Ltd. (2011) 335 ITR 438 (Cal.), wherein it has held that subsidy received for expansion of capacities, modernization and improving the marketing capabilities to tide over the crises for promotion of industry in the state is to be treated as capital in nature. That similarly, the issue is covered in the case of Shree Balaji Alloys & Ors. –vs.- CIT (2011) 333 ITR 335 (J&K) wherein it has been held that excise duty refund and interest subsidy received for the purpose of eradication of unemployment in the state by acceleration of industrial development and removing backwardness of the area that lagged behind in industrial development is to be treated as capital receipt.

8. Ld. A.R. also submitted that similar view was given in following decisions:-

DCIT –vs.- Reliance Industries (2004) 88 ITD 273 (Mum.)(SB);

CIT –vs.- Chaphalkar Brothers (2013) 351 ITR 309 (Bom.);

CIT –vs.- Birla VXL Ltd. (2013) 90 DTR 376 (Guj.)(HC);

Hydro Carbons & Chemicals –vs.- ACIT (ITA No. 1982-86/Kol/09 dated 29.04.2011);

Indo Rama Synthetics (I) Ltd. –vs.- ACIT (2012) 33 CCH 526 (Del.)(ITAT). ITA Nos.5644/11, ITA No.8565/M/10 & ITA Nos.296&4154/12 13

9. Ld. Departmental Representative, on the other hand, relied upon the orders of the authorities below.

10. We have carefully considered the submissions. We find considerable cogency in the submissions of the ld. Counsel of the assessee. We find that identical issue under the Technology

Upgradation Fund Scheme (in short „TUFS“) of Ministry of Textiles was considered by the Hon“ble Punjab & Haryana High Court in ITA No. 472 of 2010 vide decision dated 17.01.2011. Hon“ble High Court has considered and held the issue as under:-

“2. The assessee is engaged in manufacture and sale of woolen garments. It received subsidy for repayment of loan taken for building, plant and machinery under the Credit Linked Capital Subsidy Scheme under Technology Upgradation Fund Scheme (TUFS) of Ministry of Textiles, Government of India. The assessee claimed the said subsidy to be capital receipt but the Assessing Officer did not accept the same and added back the same to the income of the assessee holding the same to be revenue receipt. On appeal, the CIT(A) upheld the plea of the assessee, which view has been affirmed by the Tribunal with the following observations:-

“Having regard to the aforesaid, in our view, it is quite clear that the objective of the subsidy scheme was to enhance the technology apparatus of the assessee by assisting in acquiring machinery and further that 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.

10. Considered in the aforesaid light, in our view, the facts of the instant case are on all fours comparable to those considered by the Hon“ble Supreme Court in the case of Ponni Sugars & Chemicals Ltd. (supra) and therefore, a natural corollary is that the nature of the subsidy in question is capital. Therefore, both on the issue of the objective of the scheme and on the utilization of the funds received as subsidy, the subsidy is to be viewed as capital in nature having regard to the judgment of the Hon“ble Supreme Court in the case of Ponni Sugars & Chemical Ltd. (supra).

11. Reliance placed by the Revenue on the case of Sawhney Steels and Press Works Ltd. & others (supra), in our view, is not appropriate having regard to the aforesaid features of the scheme,

which are not in dispute. Moreover, in the case of Sawhney Steels and Press Works Ltd. & others (supra), it was found as a fact that the subsidy was given to meet recurring expenditure and was not for acquiring a capital asset. Whereas in the instant case, admittedly, there is no provision in the scheme to grant subsidy to meet any recurring expenditure and neither such a case has been set up by the Department. The only objections of the Department are that the subsidy has been given after commencement of production and, secondly that it was for repayment of loans. Both these factors do not distract from the nature of the subsidy being treated as capital, as explained by the Hon"ble Supreme Court in the case of CIT vs. Ponni Sugars Chemicals Ltd. [2008] 306 ITR 392 (SC).

3. We have heard learned counsel for the appellant.

4. Learned counsel for the revenue submitted that the subsidy was not given at hte time of setting up of the industry but after commencement of production for repayment of loan. In such situation, the amount should have been treated as revenue receipt as per judgment of the Hon"ble Supreme Court in Sahney Steel & Press Works Ltd. & Ors. v. CIT (1997) 228 ITR 253.

5. We are unable to accept the submission.

6. The purpose of scheme under which the subsidy is given, has been discussed by the Tribunal. To sustain and prove 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 on the lending agency on purchase of technology upgradation or to give capital subsidy on the investment in compatible machinery. In the present case, the assessee has taken term loans for technology upgradation and subsidy was released under agreement dated 12.7.2005 with Small Industry Development Bank of India. The relevant clause of the agreement under which the subsidy was given is as under:-

“Para 8. - to prevent misutilization of capital subsidy and to provide an incentive for repayment, the capital subsidy will be treated as a non interest bearing term loan by the Bank/Fis. The repayment schedule of the term loan however will be worked out excluding the subsidy amount and subsidy will be adjusted against the term loan account of the beneficiary after a lock in period of three years on a pro-rate basis in terms of release of capital subsidy. There is no apparent or real financial loss to a borrower since the countervailing concession is extended to the loan amount.”

7. In view of above, the view taken in Sahney Steel & Press Works Ltd. & Ors., could not be applied in the present case, as in said case the subsidy was given for running the business. For determining whether subsidy payment was „revenue receipt“ or „capital receipt“, character of receipt in the hands of the assessee had to be determined with respect to the purpose for which subsidy is given by applying the purpose test, as held in Sahney Steel & Press Works Ltd. & Ors. itself and reiterated in later judgment in CIT v. Ponni Sugars & Chemicals Ltd. & ors. (2008) 306 ITR 392, referred to in the impugned order of the Tribunal.

8. In view of above, since the matter is covered by judgment of the Hon“ble Supreme Court in CIT v. Ponni Sugars & Chemicals Ltd. & ors. [2008] 306 ITR 392(SC) against the revenue, no substantial question of law arises”.

11. Thus we find that on identical issue the matter has been decided in favour of the assessee. In these circumstances, we are of the opinion that as held hereinabove in order to sustain competitiveness in the domestic as well as international markets and overall long-term viability of the industry, the concerned Ministry adopted the TUFs scheme envisaging Technology Upgradation of the Industry. Hence, the subsidy received in this regard falls into capital field. Hence respectfully following the precedent as above we set aside the order of the ld. CIT(Appeals) and decide the issue in favour of the assessee.

10. In the result, the appeal filed by the assessee stands allowed.”

15. In view of the above discussion, we do not find any merit in the order passed by the lower authorities treating the subsidy so received as revenue receipts. Accordingly, the AO is directed to treat the subsidiary in all the years under consideration are capital in nature.”

7. Since, the identical issue has already been decided in favour of the assessee by the co-ordinate Bench in assessee's own case above referred, we respectfully follow the decision of the co-ordinate Bench and set aside the impugned order passed by the Ld. CIT(A) and allow the grounds of appeal of the assessee. Accordingly, we direct the A.O to treat interest subsidy as capital receipt.

8. In the result appeal filed by the assessee for A.Y. 2011-12 is allowed.

Order pronounced in the open court on 26th October, 2016

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated:26/10/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
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

Pramila