

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.1,04,81,524/- made on account of discount received on deferred sales-tax scheme relying upon the decision of Hon'ble Bombay High Court in the case of Sulzer India Limited (ITA No.450 and 762 of 2013 dated 05/12/2014), where the facts were different in so far as in the present case the assessee received the sales tax discount after slump sale of Satara Unit which was the sole unit of the company, whereas in the case of Sulzer India Limited the sales tax discount was received by the same company.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that sales tax discount received by the assessee after slump sale has to be assessed as income of the assessee as all the assets and liabilities were transferred before the receipt of the sales-tax discount.

3. The Appellant craves leave to add, to amend and / or to alter any of the grounds of appeal, if need be.

4. The Appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-47, Mumbai may be set aside and that of the Assessing Officer restored.”

3. Briefly put, the controversy in this appeal revolves around the sales tax deferment benefit earned by the assessee of Rs.1,04,81,524/-. Notably, the assessee is a company incorporated under the provisions of the Companies Act, 1956 which is, *inter-alia*, engaged in the business of manufacturing, trading and distribution of pharmaceutical formulations. It was noted by the Assessing Officer that the assessee was eligible for sales tax deferment benefit through the Maharashtra Government scheme in terms of which repayment of the deferred amount of sales tax was to begin from 2013. In the interregnum, the State Government came out with a modified scheme which permitted

the beneficiaries to prepay the deferred sales tax on a Net Present Value (NPV) basis. The assessee availed of the said scheme and accordingly, prepaid the amount of deferred tax at NPV, which resulted in a benefit accruing to the assessee of Rs.1,04,81,524/-. Though the said amount was credited in the Profit & Loss Account, but in the computation of income filed alongwith the return of income, assessee claimed it as a capital receipt not chargeable to tax. The Assessing Officer held that the amount of Rs.1,04,81,524/-, which was the difference between the NPV and the future liability, was not outside the scope of taxation, and it was a trading receipt chargeable to tax. Accordingly, he brought to tax the sum of Rs.1,04,81,524/- in the assessment order. The CIT(A), however, has deleted the addition by placing reliance on the judgment of the Hon'ble Bombay High Court in the case of *Sulzer India Limited, 369 ITR 717 (Bom.)*. Against such a decision of the CIT(A), Revenue is in appeal before us.

4. Before us, there is no rebuttal by the Revenue that the issue in this appeal is fully covered by the judgment of the Hon'ble Bombay High Court in the case of *Sulzer India Limited (supra)* and, therefore, we find no merit in the appeal of the Revenue. However, before parting, we may also touch upon the arguments raised by the Revenue, as manifested in its Grounds of appeal. In its Grounds of appeal, Revenue has sought to distinguish the judgment of the Hon'ble Bombay High Court in the case of *Sulzer India Limited (supra)* on the ground that in the instant case assessee had sold the business of its Satara unit on a slump sale basis and that the sales tax benefit in question has been received after such sale. Firstly, we have perused the assessment order

and find that no such reasoning has been taken by the Assessing Officer in coming to hold that the sales tax benefit in question was a trading receipt. Be that as it may, in our view, the factum of assessee having sold off its Satara unit on a slump sale basis is of no consequence while determining the nature and taxability of the impugned sales tax benefit accruing to the assessee. The Hon'ble Bombay High Court in the case of *Sulzer India Limited (supra)* has specifically considered the sales tax deferral scheme of the state of Maharashtra, under which assessee has received the impugned benefit, and thereafter has come to a conclusion that such amount was indeed a capital receipt not chargeable to tax. Thus, we find no reasons to interfere with the decision of the CIT(A), which we hereby affirm.

5. In the result, appeal of the Revenue is dismissed, as above.

Order pronounced in the open court on 3rd October, 2017.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Mumbai, Date : 3rd October, 2017

SSL

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai