

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2050/Mds/2017

निर्धारण वर्ष / Assessment Year : 2010-11

The Deputy Commissioner of
Income Tax,
Corporate Circle – 5(1),
Chennai - 600 034.

v. M/s Regen Powertech Pvt. Ltd.,
KRM Plaza, 7th floor, North Tower,
No.2, Harrington Road,
Chennai - 600 031.

(अपीलार्थी/Appellant)

PAN : AADCR 5531 M

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Smt. Ruby George, CIT

प्रत्यर्थी की ओर से/Respondent by : Sh. B. Ramakrishnan, CA

सुनवाई की तारीख/Date of Hearing : 31.01.2018

घोषणा की तारीख/Date of Pronouncement : 08.02.2018

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-3, Chennai, dated 28.10.2016 and pertains to assessment year 2010-11.

2. There was a delay of 185 days in filing this appeal by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. D.R. and the Ld. representative for

the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. The only issue arises for consideration is addition of VAT subsidy received by the assessee from Government of Andhra Pradesh.

4. Smt. Ruby George, the Ld. Departmental Representative, submitted that the assessee received VAT subsidy of Government of Andhra Pradesh. According to the Ld. D.R., the assessee received the subsidy after commencement of business operation year after year. The incentive was a supplementary trading receipt. After the receipt of subsidy, the assessee has discretion to use the same in the way in which it desires. According to the Ld. D.R., when the assessee was receiving subsidy in the course of business activity, the same has to be naturally treated as revenue receipt, therefore, it has to be added to the total income. Placing reliance on the judgment of Apex Court in *Sahney Steel & Press Works Limited v. CIT* (1997) 94 Taxman 368, the Ld. D.R. submitted that the subsidy was not granted for production or bringing into existence any new asset. However, it was granted year after year

after setting up of a new industry and commencement of production. According to the Ld. D.R., such a subsidy has to be treated as revenue receipt. Referring to the order of this Tribunal for assessment year 2011-12 in the assessee's own case, the Ld. D.R. pointed out that the Revenue has filed an appeal before the High Court and the same is pending.

5. On the contrary, Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that as per the Industrial Investment Promotion Policy promoted by Government of Andhra Pradesh, VAT subsidy was announced for the industrialists who preferred to set up industry in the State of Andhra Pradesh. According to the Ld. representative, the VAT subsidy was an incentive for the industrialists to set up an industry in the State of Andhra Pradesh. It is not for running the business of the assessee. Placing reliance on the judgment of Apex Court in CIT v. Shree Balaji Alloys (2017) 80 taxmann.com 239, the Ld. representative submitted that when the subsidy was received in pursuance of industrial policy of State Government, it has to be treated as capital receipt. The Ld. representative further submitted that a similar view

was taken by this Tribunal in the assessee's own case for assessment year 2011-12 in I.T.A. No. 766/Mds/2016.

6. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the VAT subsidy was granted to the assessee in pursuance of industrial promotion policy promoted by Government of Andhra Pradesh. The very object of Industrial Investment Promotion Policy is to invite the industrialists to prefer the State of Andhra Pradesh as their destination for establishment of industry. The Apex Court in the case of Shree Balaji Alloys (supra) examined the issue and after considering its earlier judgment in CIT v. Ponni Sugars & Chemicals Ltd. (2008) 306 ITR 392 and CIT v. Meghalaya Steels Ltd. (2016) 383 ITR 217, found that refund of excise duty and interest subsidy received by the assessee in pursuance of industrial policy of Government of State would be capital receipt. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 8th February, 2018 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 8th February, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Chennai-34
4. Principal CIT- 5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.