

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1016/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

The Dy. Commissioner of Income Tax,
Circle – 14, Pune

.... अपीलार्थी/Appellant

Vs.

John Deere Equipment Pvt. Ltd.,
(Now John Deere India Pvt. Ltd.)
Tower XIV, Cyber City, Magarpatta City,
Hadapsar, Pune – 411013

.... प्रत्यर्थी / Respondent

PAN: AAACL7331A

अपीलार्थी की ओर से / Appellant by : Shri Rajeev Kumar

प्रत्यर्थी की ओर से / Respondent by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 27.03.2018	घोषणा की तारीख / Date of Pronouncement: 28.03.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the Revenue is against the order of CIT(A)-7, Pune, dated 30.04.2015 relating to assessment year 2010-11 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The Revenue has raised the following ground of appeal:-

- (1) *Whether on the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) has grossly erred in deleting the addition made on account of Sales Tax subsidy as revenue receipt.*

3. The only issue raised in the present appeal by the Revenue is against treatment of Sales Tax Subsidy as capital or revenue receipt.

4. The learned Authorized Representative for the assessee pointed out that the said issue of sales tax subsidy received by the assessee is whether capital receipt or revenue receipt, arose before the Tribunal in assessee's own case relating to assessment years 2006-07 and 2007-08 in ITA Nos.1476/PN/2010 and 1686/PN/2011, order dated 20.02.2015. The learned Authorized Representative for the assessee further pointed out that the said ratio was applied by the Tribunal in assessment year 2008-09 in ITA No.02/PN/2013, vide order dated 20.02.2015 and in ITA No.828/PUN/2014, relating to assessment year 2009-10, order dated 17.05.2017.

5. The learned Departmental Representative for the Revenue relied on the order of Assessing Officer.

6. We have already decided similar issue in assessee's own case for different assessment years. The latest order of Tribunal relates to assessment year 2009-10, wherein, it was held as under:-

"6. We have heard the rival contentions and perused the record. The assessee had set up a unit at Sanaswadi, near Pune, wherein it was engaged in manufacturing of tractors, aggregates and parts which were sold in the domestic market as well as foreign market. The assessee was a joint venture between Larsen & Toubro Limited (L&T), India and Deere & Co. Both the joint venture partners had an equal stake in the assessee company. During the financial year 2005-06, John Deere India Pvt. Ltd. acquired 48% of L&T's stake and as a result of which, John Deere Equipment Pvt. Ltd. (JDEPL), the assessee company became wholly owned subsidiary of John Deere India Pvt. Ltd., which was a wholly owned subsidiary of Deere & Co., USA. During the year under consideration, the assessee had claimed deduction of Rs.14,69,36,189/- on account of sales tax incentive. The assessee had received the said incentive for the units set up in notified backward area under the Government of Maharashtra "1993 Package Scheme of Incentives", under which the persons were eligible for either sales tax and purchase tax exemption or deferment of the sales tax and purchase tax collected over a period of 15

years. The assessee initially opted for deferring scheme, as per which, it was authorized for collection of sales tax but payment was to be made after 15 years. Later on in September, 2001, assessee shifted from deferral scheme to exemption scheme. Accordingly, the assessee was entitled to the exemption from sales tax and purchase tax. The assessee treated the sales tax and purchase tax subsidy of Rs.14,69,36,189/- as capital receipt in its return of income. The case of assessee was that as per the scheme of Government of Maharashtra State, subsidy was granted in order to encourage setting up of units in backward areas. The same was available only to certain industries depending upon fulfillment of the conditions. The Assessing Officer on the other hand, had noted that the subsidy was granted in order to increase profitability of the assessee company. The Assessing Officer acknowledged that there was no doubt that the exemption was allowed for setting up of units in backward areas. However, the purpose of capital incentive by way of exemption was clearly to allow the company to run its business more profitably. The Assessing Officer further observed that the incentive was not calculated on the basis of capital employed and also the incentive has not been allowed before setting up of the business. Where the benefit was granted to the assessee to assist him for carrying out the business operations in the backward areas and not to help him in setting up of his business or complete the project, then the said sales tax incentive of Rs.14.69 crores is to be added as income of the assessee. The Assessing Officer placed reliance on the ratio laid down by the Hon'ble Supreme Court in CIT Vs. Ponni Sugars and Chemical Ltd. (2008) 306 ITR 392 (SC). The assessee on the other hand, relied on the ratio laid down by the Mumbai Bench of Tribunal in the case of DCIT Vs. Reliance Industries Ltd. (2004) 88 ITD 273 (Mum), which was confirmed by the Hon'ble Bombay High Court. The Assessing Officer in the final assessment order noted that the apex court in Civil Appeal No.7769/2011 had set aside the order of the Hon'ble High Court and the assessee's reliance on the same was found to be incorrect.

7. The issue which arises in the present appeal is in relation to treatment of sales tax / purchase tax subsidy received by the assessee under 1993 Package Scheme of Incentives promulgated by the Government of Maharashtra. The assessee had set up its unit and had received similar subsidy in assessment years 2006-07 to 2008-09. The Tribunal (supra) had allowed the claim of assessee and had held that the said amount of subsidy received by the assessee under 1993 Package Scheme of Incentives promulgated by the Government of Maharashtra was a capital receipt. The Mumbai Bench of Tribunal in DCIT Vs. Reliance Industries Ltd. (supra) had also considered the said claim and have held that the sales tax / purchase tax subsidy received under 1993 Package Scheme of Incentives is a capital receipt. The facts and issue arising in the present appeal are identical to the issue before the Tribunal in assessee's own case and hence to avoid repetition, we adopt our reasoning given in assessment year 2006-07 for holding that the sales tax / purchase tax subsidy received by the assessee is capital receipt. We find that the said scheme of Government of Maharashtra was considered by the Hon'ble Bombay High Court in CIT Vs. Kirloskar Oil Engines Ltd. (2014) 364 ITR 88 (Bom) and it has been held that the object of assistance under subsidy scheme to enable assessee to set up new unit, was a capital receipt. Following the same parity of reasoning, we hold that the subsidy received by the assessee was capital in nature. Accordingly, grounds of appeal No.1 and 1.1 are thus, allowed."

7. The issue arising in the present appeal is squarely covered by the orders of Tribunal in assessee's own case and following the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Kirloskar Oil Engines Ltd. (2014) 364 ITR 88 (Bom), we hold that subsidy received by the assessee was capital in nature. Thus, the ground of appeal raised by the Revenue is dismissed.

8. In the result, the appeal of Revenue is dismissed.

Order pronounced on this 28th day of March, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 28th March, 2018.

GCVSR

आदेश की प्रतिलिपि अद्योषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-7, Pune;
4. The Pr.CIT-6, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune