

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

Before Shri Mahavir Singh (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.4618/Mum/2016
(Assessment year: 2011-12)

ACIT-1(1)(2), Mumbai	vs	M/s Deegee Orchards Pvt Ltd 4 th Floor, Central Bldg No.3, Master Bomanji Lane, Kalbadevi, Mumbai 400 002 PAN : AABCD3086F
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Appellant by	Shri Rajat Mittal
Revenue by	Shri Mahesh O Poojara

Date of hearing	13-03-2018
Date of pronouncement	-03-2018

ORDER

Per G Manjunatha, AM :

This appeal filed by the revenue is directed against the order of the CIT(A)-3, Nagpur dated 04-05-2016 and it pertains to AY 2011-12.

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and trading in refined oils and windmill electricity generation filed its return of income for AY 2011-12 on 26-09-2011 declaring income at Nil. The assessment has been completed u/s 143(3) on 26-03-2013 determining the total income at Rs. 1,34,54,815 by making disallowance of Rs.34,95,017 towards sales-tax incentive received from state government. The assessee carried the

matter in appeal before the first appellate authority. The CIT(A), for the detailed reasons, recorded in his order dated 04-05-2016, deleted addition made by the AO by following the decision of ITAT, Nagpur bench in assessee's own case for AY 2003-04 to 2009-10 and held that sales-tax incentive availed are capital receipt and is not chargeable to tax. Aggrieved by the CIT(A)'s order, revenue is in appeal before us.

3. At the time of hearing, the Ld.AR for the assessee submitted that the issue is squarely covered in favour of the assessee in assessee's own case for AY 2003-04 to 2009-10, wherein the ITAT by following its own order in assessee's own group case, M/s Narendra Vegetable Products Pvt Ltd in ITA No.118 to 124/Nag/2013 has allowed the appeal of the assessee. On the other hand, the Ld.DR strongly supporting the order of the AO submitted that sales-tax subsidy received from state government is revenue in nature and was taxable as profits. The Ld.DR relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs Bhushan Sales & Strips Ltd (2012) 398 ITR 260.

4. We have heard both the parties and perused the material available on record. We find that the ITAT, Bench in assessee's own case for earlier years has held that the sales-tax subsidy received from state government is capital in nature and not exigible to tax. The relevant portion of the order is extracted below:-

“3. On identical facts and circumstances we have taken a view

in a group of cases of M/s Narendra Vegetable Products Pvt Ltd bearing ITA Nos. 118 to 124/Nag/2013 for assessment years 2003-04 to 2009-10 vide order even dated 31st July, 2015. Following the reasons assigned in the said order, we hereby decide ground Nos.1,2 and 3 in favour of the assessee. Ground No.4 is consequential in nature pertaining to charge of interest needs no adjudication presently. Resultantly, all the appeals are allowed."

5. In this view of the matter and consistent with the view taken by the co-ordinate bench, we are of the considered view that sales-tax incentive received from state government being a capital receipt is not exigible to tax. The CIT(A), after considering relevant facts has rightly deleted addition made by the AO. We do not find any error in the order of the CIT(A) and hence, we are inclined to uphold the findings of the CIT(A) and dismiss the appeal filed by the revenue.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 21st March, 2018.

Sd/-

sd/-

(Mahavir Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 21st March, 2018

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Sr.PS, ITAT, Mumbai