IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.564/Kol/2015

(निर्धारणवर्ष / Assessment Year: 2010-11)

Sova Ispat Ltd. EN-32, Shyam Tower, Sector-V, Salt Lake City, Kolkata – 700 091.	**Vs.**	**Principal C.I.T, Kolkata** Aayakar Bhawan, P-7, Chowringhee Square, Kolkata – 700 069.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :**AAHCS 4673 H**		
(Appellant)	**..**	**(Respondent)**

Appellant by : Shri A. K. Tulsian, FCA
Respondent by :Shri G. Hangshing, CIT(DR)

सुनवाईकीतारीख/ **Date of Hearing : 11/04/2018**

घोषणाकीतारीख/**Date of Pronouncement : 04/05/2018**

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the Assessee, pertaining to Assessment Year 2010-11, is directed against an order passed by the Ld. Principal Commissioner of Income Tax-1, Kolkata dated 19.03.2015, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 22.03.2013.

2. The Grievances raised by the assessee (revised) are as follows:

"1) That the Ld. PCIT erred in exercising the power u/s. 263 by holding that the order passed u/s.143(3) is appeared to be erroneous so far as prejudicial to theinterest of the revenue.

2) That the A.O has accepted the IPA as capital receipt after examination ofdocuments and relying on the jurisdictional High Court decision in the case ofM/s. Rasoi India Ltd. As such the assessment order can't be held to be erroneous& prejudicial to the interest of revenue to the extent of this issue.

3) That the IPA was received as per the West Bengal Incentive Scheme, 2000. Theeligible certificate issued by the competent authority as per the West Bengal Incentive Scheme, 2000 approved as mega project under the said scheme, inwhich the IPA is received. The assessee is covered by the Jurisdictional HighCourt decision in the case of M/s. Rasoi India Ltd. and various other decisions ofjurisdictional ITAT. Hence it cannot be held to be either erroneous or prejudicialto the interest of the revenue.

4) That the assessee craves leave to add, alter, amend or withdraw any ground orgrounds of appeal before or at the time of hearing."

3. The brief facts of the case is that the Assessing Officer passed the assessment order u/s 143(3) in respect to assessee company by order dated 22.03.2013. This order of the Assessing Officer has been interfered by the ld. Principal CIT-1 exercising his revisional jurisdiction u/s 263 of the Act and has passed impugned order dated 19.03.2015 and has set aside the original assessment order dated 22.03.2013 in respect of (i) subsidy received amounting to Rs.196.77 lakhs and allowing deduction on account of unpaid liability for gratuity of Rs.2,10,450/- and passed the following direction:

"I have gone through the issues on hand and the submissions of the assessee company. The main issue is that the Assessing Officer has failed to deal the specific facts of the case as per law and has not scrutinized/verified the details in respect of the issues regarding subsidy receipts to be taxed as revenue receipts amounting to Rs.196.77 lakhs and allowing deduction on account of unpaid liability for gratuity of Rs.2,10,450/- vide notice dt: 03.03.2015. The assessment order u/s 143(3) of the I.T. Act passed by the Assessing Officer on 22.03.2013 is, therefore, appeared to be erroneous in so far as prejudicial to the interest of revenue and hence the same is set-aside in respect of the above mentioned issues to the file of the Assessing Officer with the direction that the detailed facts should be brought on record, scrutinized and verified. Thereafter, a decision should be arrived at as per provisions of I.T. Act after giving proper opportunity to the assessee company and considering the submissions/explanation filed by it."

4. At the outset itself, the ld. counsel for the assessee drew our attention towards Para No.5 of the order of the ld. Principal CIT u/s 263 of the Act wherein the assessee stated the judgment of Jurisdictional High Court, Calcutta in the case of CIT vs. Rasoi Ltd. 335 ITR 438 (Cal), which should be followed. The judgment of the Jurisdictional High Court, clearly

spells out that a subsidy received under "Industrial Promotional Assistance" (IPA) is a capital receipt. The ld. counsel for the assessee therefore requested the Bench that the judgment of Jurisdictional High Courtcase of CIT vs. Rasoi Ltd (supra) should be followed and for that he requested the Bench to give direction to the Assessing Officer to follow the judgment of the Jurisdictional High Court while giving appeal effect of the order of the ld. Principal CIT u/s 263 of the Act. However, ld. DR for the Revenue is mainly relied on the findings of the ld. Principal CIT and stated that no direction should be given to the Assessing Officer to follow the judgment of the Jurisdictional High Court.

5. We have given a careful consideration to the rival submissions and perused the material available on record, we note from the revised grounds of appeal reproduced above, the assessee has not preferred to challenge the direction of the ld. Principal CIT in respect of direction for unpaid liability for gratuity of Rs.2,10,450/-. Therefore, the said direction is not disturbed. Giving to the next direction in respect of subsidy received of Rs.196.77 lakhs is concerned, we note from a perusal of the assessment order of Assessing Officer that there is no whisper about the subsidy of Rs.2,33,51,560/- received by the assessee from W.B.I.D.C.I (promotional assistance). The ld. counsel for the assessee could not bring to our notice any statutory notices issued by the Assessing Officer during assessment proceedings wherein the question of the said receipts has been queried as to whether it is a capital receipts or revenue receipts. Therefore, the ld. Principal CIT's observation that the Assessing Officer did not investigate this issue, could not be controverted by the assessee. It has to be noted that the Assessing Officer while assessing an assessee, plays a dual role to discharge (i) as an investigator and (ii) as a adjudicator. In this case, we note that the Assessing Officer has not conducted any investigation in respect of subsidy received by the assessee. Therefore, the order of the Assessing Officer is erroneous on this score for non-investigating this issue. Therefore, ld. Principal CIT has the jurisdiction to exercise revisional

jurisdiction u/s 263 of the Act. However, we direct the Assessing Officer that while giving appeal effect to the order of ld. Principal CIT, has to consider the judgment of the Hon'ble Jurisdictional High Court in the case of CIT vs. Rasoi Ltd.(supra), provided the facts of the assessee`s case are identical to the facts of the judgment of the Hon'ble Jurisdictional High Court in the case of CIT vs. Rasoi Ltd.(supra), which is mentioned in Para-5 of the order of ld. Principal CIT u/s 263 wherein the assessee's submissions on this issue is reproduced by ld. CIT which reads as follows:

> *It is to state that the assessment made u/s 143(3) for the above A.Y on 22.3.2013 was neither erroneous nor prejudicial to the interest of revenue. Subsidy of Rs.2,33,51,560/- received from W.B.I.D.C.I promotional assistance was capital receipt and the matter was discussed at the time of assessment. A copy of the letter submitted before the Assessing Officer is enclosed. After considering the fact the Assessing Officer had allowed the claim. As per decision of the jurisdictional High Court in the case of CIT vs. Rasoi Ltd. 335 ITR 438 (Cal), subsidy received under Industrial Promotional assistance is capital receipt. Our case is identical, so no part of subsidy received can be treated as revenue receipt. A copy of the judgment in the case of Rasoi Ltd. is enclosed. The similar issue was held by the Hon'ble Jurisdictional High Court in the case of CIT, Central-II, Kolkata vs. M/s. Strassenburg Pharmaceuticals Ltd. G.A. 2042 of 2011, ITAT No.201 of 2011 dated 21.07.2011 holding that various amounts received by the assessee as subsidy under the W.B.I. Promotional Assistance is capital in nature. Reliance may also be placed on the case of KlarSehan Pvt. Ltd. vs. Assessing Officer wherein it was held that –*
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> *"When financial crises is faced by some business, pumping in of fresh capital is required to help the business to tide over such financial crises. The Financial help, in this regard has, therefore, got to be considered as having an enduring effect of dragging in the business out of poor financial conditions being faced by the industries. The scheme of West Bengal Govt. does not at all envisage giving any subsidy in respect of specify items of expenses like sale tax, power, water etc. and hence the same cannot be regarded to be revenue nature."*
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> *To conclude on our case, the subsidy in the form of Industrial Promotion Assistance received by way of refund of Sales Tax is not on account of subsidy in respect of specific item of expenses like sales tax, power, water etc. The incentive is directly linked with the investment made in setting up of new industries in the area demarcated in the scheme of WBIs 2000. Therefore, under no circumstances the receipt of IPA can be treated as revenue receipt."*

6. So, while giving effect to the order of the ld. Principal CIT, the Assessing Officer shall consider the aforesaid submissions of the assessee & the observations of ours given above. Needless to say that the assessee should be heard before passing the appeal effect order by the

Assessing Officer. The Assessing Officer, to pass a speaking order taking into consideration judicial precedents cited above, provided the facts of the assessee`s case are similar and identical to the facts of the case in Rasoi Ltd.(supra). The ld AO should also consider the other cases stated by the ld. counsel for the assessee and adjudicate the issue in accordance with law. For clarity about the binding effect of the ratio laid by the Hon'ble Constitutional High Court and Supreme Court and other courts/quasi-judicial and other authorities, we would like the authority below to go through the judgment of Hon'ble Supreme Court in the case of Kapur Chand Shrimal, 131 ITR 451 (SC), wherein it was held as follows:

> ***"17.*** *From a fair reading of s. 25A of the Act it appears that the ITO is bound to hold an inquiry into the claim of partition if it is made by or on behalf of any member of the HUF which is being assessed hitherto as such and record a finding thereon. If no such finding is recorded, sub-s. (3) of s. 25A of the Act becomes clearly attracted. When a claim is made in time and the assessment is made on the HUF without holding an inquiry as contemplated by s. 25A(1), the assessment is liable to be set aside in appeal as it is in clear violation of the procedure prescribed for that purpose. The Tribunal was, therefore, right in holding that the assessments in question were liable to be set aside as there was no compliance with s. 25A(1) of the Act.* ***It is, however, difficult to agree with the submission made on behalf of the assessee that the duty of the Tribunal ends with making a declaration that the assessments are illegal and it has no duty to issue any further direction. It is well-known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. The statute does not say that such a direction cannot be issued by the appellate authority in a case of this nature. In interpreting s. 25A(1), we cannot also be oblivious to cases where there is a possibility of claims of partition being made almost at the end of the period within which assessments can be completed making it impossible for the ITO to hold an inquiry as required by s. 25A(1) of the Act by following the procedure prescribed therefor. We, however, do not propose to express any opinion on the consequence that may ensue in a case where the claim of partition is made at a very late stage where it may not be reasonably possible at all to complete the inquiry before the last date before which the assessment must be completed."***

7. We note that judgment of the Hon'ble jurisdictional High Court should be followed by the Tribunal and authorities below, for that we rely

on the judgment of the Hon`ble Bombay High Court in the case of Thane Electricity Supply, 206 ITR 727 (Bom.H.C), wherein it was held as follows:

> *"The law declared by the Supreme Court being binding on all Courts in India, the decisions of the Supreme Court are binding on all Courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.*
>
> *The decisions of the High Court are binding on the subordinate Courts and authorities or Tribunal under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.*
>
> *A Single Judge of a High Court is bound by the decision of another single judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question. A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs with another Division Bench of the same High Court. It should refer the case to a larger Bench. Where there are conflicting decisions of Courts of co-ordinate jurisdiction, the later decision is to be preferred if reached after full consideration of the earlier decision.— Food Corporation of India vs. Yadav Engineer & Contractor AIR 1982 SC 1302* ***relied on***
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> *The decision of one High Court is neither binding precedent for another High Court nor for Courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories in which the Court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only a persuasive effect. By no amount of stretching of the doctrine of stare decisis judgments of one High Court can be given the status of a binding precedent so far as other High Courts or Courts or Tribunals within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate Courts or Tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all Courts in the country by virtue of Art. 141 of the Constitution. If for the sake of uniformity, the decisions of any High Court are to be accepted as a binding precedent by all Courts including other High Courts and Tribunals in the country, the very distinction between the precedent value of Supreme Court decision and the High Court decision will be obliterated. Such a situation is neither contemplated by the Constitution nor it is in consonance with the principles laid down by the Supreme Court and the doctrine of stare decisis. A conjoint reading of ss. 257 and 260 of the IT Act clearly goes to show that the Act itself contemplates independent decisions of various High Courts on the*

question of law referred to them. It has visualised the possibility of conflict of opinion between different High Courts on the same question of law and has also made specific provision to take care of such a situation in suitable cases. In fact, in the light of the clear language of s. 260 of the Act, every High Court is required to give its own opinion on a particular question of law. It should not follow, as a matter of course with a view to achieve uniformity in the matter of interpretation, the decision of another High Court, if such decision is contrary to its own opinion. Because, such action will be contrary to the clear mandate of s. 260 of the Act. It will amount to abdication of its duty by the High Court to give "its decision"on the point of law referred to it. Decision of one High Court is not binding on another High Court.

Reference was made by the assessee to the decisions of this Court wherein, emphasizing the need of uniform decisions, it was observed that decision of one High Court should be followed by another High Court. On a careful reading of the observations in the light of the questions which were before the Court for determination in those cases, it is difficult to accept these observations as the ratio decidendi of those decisions. These are observations by way of obiter dicta which, at the best, may have a persuasive efficacy but not the binding character of a precedent. Even that may not be correct. As these observations were made by the Court while emphasising the necessity of maintaining uniformity in the matter of interpretation of all India statutes, they may be more appropriately termed as "casual observations. It is, clear that it is the satisfaction of the Court interpreting the law that the language of the taxing provision is ambiguous or reasonably capable of more meanings than one, which is material. If such Court does not think so, the fact that two different views have been advanced by parties and argued forcefully, or that one of such view, which is favourable to the assessee, has been accepted by some Tribunal or High Court, by itself will not be sufficient to attract the principle of beneficial interpretation. In the instant case, as the High Court of Bombay is not satisfied with the interpretation given by the Tribunal or the Calcutta High Court to s. 33(6) of the Act, accepting those decisions by applying the test of beneficial interpretation does not arise.—Escorts Ltd. vs. Union of India (1992) 108 CTR (SC) 275 : (1993) 199 ITR 43 (SC)"

8. Taking light from the aforesaid dictum of law laid down by the Hon'ble Supreme Court and Hon'ble High Court, we note that the assessee's plea before us is that while adjudicating the nature of subsidy received by the assessee whether it is capital/Revenue in nature. The Assessing Officer shall follow the ratio decidendi laid by the Hon'ble Jurisdictional High Court in the case of Rasoi Limited (supra) in case if the facts and law are identical. With the aforesaid observation, we direct the Assessing Officer to give effect to the order of the ld. CIT in respect of both the issues after hearing the assessee and pass a speaking order.

9. We dismiss the present appeal of the assessee and do not comment on the order of the Principal CIT U/s 263 of the Act, for which the assessee is in appeal before us.

10. In the result, the appeal of the assessee is dismissed with aforesaid observations.

Order is pronounced in the open court on 04.05.2018.

Sd/-	**Sd/-**
(A. T. VARKEY)	**(A. L. SAINI)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

कोलकाता /Kolkata;
दिनांक/ Date: 04/05/2018
(RS, SPS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- Sova Ispat Ltd.
2. प्रत्यर्थी/ The Respondent- Principal C.I.T, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.

सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.