

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5491/MUM/2016
Assessment Year: 2012-13**

The Asst. Commissioner of Income Tax- 9(2)(2), Room No. 665A, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s Cinline India Ltd., 10 th Floor, 251, Atrium, C.T.S. No. 215, Andheri Kurla Road, Andheri (East), Mumbai - 400059 PAN : AACCC1775F
(Appellant)		(Respondent)

Revenue by : Shri Sanjay Singh (DR)
Assessee by : Shri Govind Javeri (AR)

Date of Hearing: 14/05/2018
Date of Pronouncement: 16/05/2018

आदेश / O R D E R

PER RAM LAL NEGI, JM

The present appeal has been filed by the Revenue against the order dated 30.06.2016 passed by the Ld. Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-16, Mumbai pertaining to the assessment year 2012-13, whereby the Ld. CIT (A) has allowed the appeal filed by the assessee against assessment order passed u/s143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee company engaged in the business of exhibition of films, filed its return of income for the assessment year under consideration declaring the total income of Rs. 15,59,98,744/-. The return was processed u/s 143 (1) of the Act. Since, the case was selected for scrutiny assessment, notice u/s 143 (2) and 142 (1) were issued along with questionnaire calling for various details. In response to the said notices, the

authorized representative of the assessee attended the proceedings and filed the details called for. After hearing the authorized representative in the light of the documents submitted during the proceedings, the AO *inter alia* made an addition of Rs. 10,31,28,678/-, rejecting the contention of the assessee that entertainment tax collected should be treated as capital receipt.

3. Aggrieved by the assessment order, the appellant/assessee challenged the same before the CIT (A). The Ld. CIT (A) after hearing the assessee allowed the appeal and deleted the addition of Rs. 10,31,28,678/- made by the AO. The revenue is in appeal before the Tribunal against the said order.

4. The Revenue has challenged the impugned order on the following effective grounds:-

“Whether on the facts and in the circumstances of the case and in law the Ld. CIT (A) was right in deleting the addition made on account of disallowance of Entertainment Tax collected and claimed as capital subsidy, relying on the decision in the case of M/s Chaphalkar Brother ITA No. 1342 & 1443 of 2006 (Bom), by ignoring the decision of the Hon’ble Supreme Court in the case of Sahney Steel and Press Works & Ors Vs. C.I.T. reported in 228 ITR 253 & Ponni Sugars & Chemicals Ltd. (306 ITR 392)”.

5. Before us, the Ld. departmental representative (DR) relying on the assessment order submitted that the Ld. CIT (A) has wrongly deleted the addition made by the AO on account of disallowance of entertainment tax collected and claimed as capital subsidy relying on the decision of the case of M/s Chaphalkar Brothers ITA No. 1342 & 1343 of 2006 (Bom) by ignoring the decision of the Hon’ble Supreme Court in the case of Sahney Steel and Press Works Ltd. & Ors. Vs. CIT, 228 ITR 253 and Ponni Sugars & Chemicals Ltd. 306 ITR 392.

6. On the other hand, the Ld. Counsel for the assessee submitted that the ITAT, Mumbai has decided this issue in favour of the assessee in assessee's own case, ITA No. 5718/M/2013 pertaining to the A.Y. 2010-11. Since, the Ld. CIT (A) has decided this issue in the present case by following the decision of the ITAT, there is no infirmity in the said order to interfere with the same. The Ld. counsel further submitted that the Hon'ble Supreme Court has upheld the judgment of the Hon'ble Bombay High Court delivered in the case of M/s Chaphalkar Brothers ITA No. 1342 & 1343 of 2006 (Bom).

7. We have heard the rival submissions and also perused the material on record. The only issue raised by the revenue is that the Ld. CIT (A) has wrongly deleted the addition made by the AO on account of disallowance of entertainment tax collected and claimed as capital subsidy. The Ld. CIT (A) has allowed this ground of appeal of the assessee by following the decision of the co-ordinate Bench rendered in the assessee's own case for the assessment year 2010-11. The operative part of the order of the Ld. CIT (A) reads as under:-

"5.1.1 Vide this ground, appellant has prayed that the entertainment tax of Rs. 10,31,28,678/- collected during the year under consideration should be treated as capital receipt. The Ld. A.O. has dealt this issue in para 5 of the assessment order dated 21.03.2015 while deciding the issue of entertainment tax benefit. The receipt of Rs. 10,31,28,678/- on account of entertainment tax benefit incentive were claimed as capital receipt by the appellant company by relying on earlier year's assessment order for A.Ys. 2007-08, 2008-09, 2009-10 2010-11 & 2011-12. The Ld. A.O. did not accept the claim of the appellant company. The Hon'ble ITAT has already decided the issue in earlier year's on which the Ld. A.O. has relied. In ITA No. 5718/M/2013 dated 28.01.2015 for A.Y. 2010-11, the Hon'ble Tribunal has held as under:-

“In the appeal of the revenue, the issue pertains to entertainment tax/duty collected by the assessee is whether capital receipt and whether exempted from taxation, whereas in the appeal of the assessee, the issue pertains to the subsidy received from the Government is a capital receipt and also whether is to be reduced from the value of WDV. We note that both these issues has been dealt with in detail by the Tribunal as reproduced hereinabove, therefore, without going into much deliberation, we find that the tribunal vide order dated 24.01.2014, on identical fact, in the case of assessee itself, vide aforesaid orders, deliberated upon the issue and by following the decision from Hon’ble jurisdictional High Court in the case of CIT vs. Chapalakar Brothers (order dated 08.06.2011), where in it was held that subsidy of this kind constitutes capital receipts as the same is meant for promotion of new industries by way of multiplex theaters, which has been followed by the ld. First Authority also. Therefore, we find no merit in the appeal of the revenue and also following the same order with respect to subsidy received has to be reduced from WDV of the block of asset and to allow the depreciation on the reduced value of WDV also vide para 4 of the order the Tribunal dated 24.01.2014, the issue has been decided in favour of the assessee. Respectfully following the order the Tribunal, the appeal of the revenue is dismissed and that of the assessee is allowed.

Finally, the appeal of the revenue is dismissed and that the assessee is allowed.”

5.1.2 The Hon’ble Tribunal has followed his own judgment in ITA No. 5692/Mum/2013 for A.Y. 2010-11 and ITA No. 1287 for A.Y. 2009-10. Since the facts of instant case are peri materia with the case decided by the Hon’ble Tribunal in its own case as cited above and while finalizing the assessment, the ld. A.O. has merely relied upon the findings in earlier years, no new material is brought on record. Therefore, respectfully following the Hon’ble Tribunal’s judgment, the addition of Rs. 10,31,28,678/- made by the A.O. is deleted. This ground of appeal is allowed.”

8. The Ld. CIT (A) has passed the impugned order by following the order of the co-ordinate Bench passed in the assessee’s own case ITA No.

5692/Mum/2013 for the A.Y. 2010-11 and ITA No. 1287 for the A.Y. 2009-10. We further notice that the coordinate Bench has rendered the decision in the assessee's case for the A.Y. 2010-11 by following the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Chaphalkar Brothers, (supra) wherein it was held that the object of subsidy was to promote construction of multiplex theatre complexes, the subsidy would be on capital account. In further appeal, the Hon'ble Supreme Court has upheld the judgment of the Hon'ble High Court in Commissioner of Income Tax Vs. Chaphalkar Brothers, 400 ITR 279. Since, the order passed by the Ld. CIT (A) is in accordance with the principles of law laid down by the Hon'ble Supreme Court in the aforesaid case and the decisions of coordinate Bench rendered in the assessee's own case for the A.Y. 2011-12 aforesaid, we do not find any reason to interfere with the findings of the Ld. CIT (A). We therefore uphold the order passed by the Ld. CIT (A) and direct the AO to delete the addition.

In the result, appeal filed by the revenue for assessment year 2012-2013 is dismissed.

Order pronounced in the open court on 16th May, 2018.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 16/05/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai