

IN THE INCOME-TAX APPELLATE TRIBUNAL “J” BENCH MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.175/Mum/2017 (Assessment Year 2013-14)

DCIT Circle-4(3)(2) R.No. 649, 6 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai-400020.	Vs.	M/s SVG Fashions Ltd. 235, Shree Venkateshwar Bhavan, 3 <sup>rd</sup> Floor, Kalabadevi Road, Mumbai-400002 <b>PAN: AAACD1621K</b>
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Appellant

Respondent

Appellant by : Ms. Arju Garodia (DR)  
Respondent by : Shri Rahul Bagaria (AR)  
Date of Hearing : 20.06.2018  
Date of Pronouncement : 20.06.2018

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**  
**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by Revenue is directed against the order of Id. Commissioner of Income-tax (Appeals)-9, Mumbai [Id. CIT(A)] dated 03.10.2016, which arises from the assessment order passed under section 143(3) dated 20.03.2016 for Assessment Year 2013-14. The Revenue has raised the following grounds of appeal:

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified in directing AO to treat subsidy of Rs. 39,32,980/- received from Govt. of India under Technology Upgradation Scheme (TUF Scheme) as Capital in nature.”*

2. At the outset of hearing, the Id. Authorized Representative (AR) of the assessee submits that the ground of appeal raised by Revenue is covered in favour of assessee and against the Revenue in assessee’s own case for

Assessment Year 2005-06, 2007-08 to 2009-10. It was further submitted that the Id. CIT(A) has followed the decision of Tribunal while granting relief to the assessee. The Id. Departmental Representative (DR) for the Revenue after going through the copy of decision of Tribunal in assessee's own case for Assessment Year 2005-06, 2007-08 to 2009-10 in ITA No. 5644/Mum/2011 and conceded that ground of appeal is covered in favour of assessee.

3. We have considered the contention of both the parties and perused the record. We have noted that on identical ground of appeal, the Tribunal allowed the appeal of the assessee in appeal for Assessment Year 2005-06, 2007-08 to 2009-10 with the following observation:

9. We have considered rival contentions, carefully gone through the orders of the authorities below. We have also deliberated on the judicial pronouncements cited at bar by Id. AR and DR during the course of hearing before us as well as the decision referred by lower authorities in their respective orders in the context of factual matrix of the case.

10. The issue with regard to treatment of subsidy whether capital or revenue in nature has been restored by the Tribunal vide its order dated 21.10.2009 to examine in the light of the decision of Hon'ble Supreme Court in the case of Sahney Steel and Press Works Ltd. Vs. CIT, 228 ITR 253 and Ponni Sugars and Chemicals Ltd.. The direction of the Tribunal was to consider the ratio of judgments as given in the cases of Sahney Steel and Press Works Ltd.(supra) and Ponni Sugars and Chemicals Ltd.(supra) and to analyze the facts of the assessee's case in light of the said cases and pass order accordingly. The Hon'ble Supreme Court in the case of Sahney Steel and Press Works Ltd.(supra) held as under :-

“if any subsidy is given, the character of the subsidy in the hands of the recipient-whether revenue or capital-will have to be determined by having

regard to the purpose for which the subsidy is given. If it is given by way of assistance to the assessee in carrying on of his trade or business, it has to be treated as trading receipt. The source of the fund is quite immaterial.”

In case of Ponni Sugars and Chemicals Ltd. (supra), the Hon<sup>ble</sup> Supreme Court observed as under :-

" 14 The importance of the judgment of this Court in Sahney Steel case lies in the fact that it has laid down the basic test to be applied in judging the character of a subsidy. That test is that the character of the receipt in the hands of the assessee has to be determined with respect to the purpose with which the subsidy is given. In other words, in such cases, one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. The source is not relevant. The form of subsidy is immaterial.

A close and detailed examination of the above decisions of the Supreme Court in the cases of Sahney Steel (supra) and Ponni Sugars and Chemicals Ltd.(supra) in which the decisions of the House of Lords in case of Sea ham Harbour Dock Co. v. Crook [1931] 16 TC 333 (HL) were referred to reveals that it lays down the basic test to be applied in judging the character of a subsidy. These observations in our humble understanding of the judgment, are reproduced as under:

- the character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases, one has to apply the purpose test.

- The point of time at which the subsidy is paid is not relevant.
- The source is immaterial.
- The form or the mechanism through which the subsidy is given are irrelevant.
- If the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account.

- If the incentive/subsidy is given to the assessee for assisting him in carrying out the business operation and the money is given only after and conditional upon commencement of production, such subsidy must be treated as assistance for the purpose of the trade.
- One more aspect which needs to be examined is that whether the assessee was obliged to spend the money received by way of incentive/subsidy for a particular purpose or was free to use the money in its business entirely as it liked.”

In order to arrive at the above determination, first of all we see the "objective" of the TUF Scheme as applicable in the present case of the assessee. A careful study of the objective of the Government in formulating the Scheme reveals that the main purpose in implementing the scheme was to promote Modernization of the Textile Industry through technology upgradation in the industry. The TUF Scheme was introduced for the purpose of encouraging the acquisition of technologically advanced textile machineries by way of extending loans for the specified purpose through Commercial Banks/ Financial Institutions on subsidized rates of interest, being the rate of 5% in the case of the assessee. Further, the Scheme was formulated in the interest of the overall health of the Indian economy and for increasing employment in the country. This inevitably confirms the fact that the Scheme was in the interest of the public at large and had nothing to do with supplementing the profits of the unit eligible under the said Scheme. It is evident from an analysis of the scheme that the TUF Scheme was introduced for the specific purpose of enabling the acquisition of new state of the art modern machinery by way of extending loans for the specified purpose. Installation of the specified machinery in a new unit or in an existing unit by way of replacement of existing machinery and/or expansion will be eligible for coverage under TUF scheme. Thus, it is clear that the subsidy was to be granted only in the case of acquisition of new machinery. Second hand machines were specifically kept out of the purview of the Scheme except for certain specified second hand imported machinery. Further the eligible machinery were to be state of the art machinery and it was specifically stated that machinery with technology levels lower than that specified will not be permitted for funding under the TUF Scheme. From perusal of the Scheme, it is evident that the eligibility for the receipt of the interest subsidy under the TUF Scheme was the date of sanction of the loan by the Bank/Financial Institution and that the subsidy was nowhere dependent on the commencement of any business operations of the assessee-company.

11. In view of the above and applying the proposition of law laid down by the Hon<sup>ble</sup> Supreme Court as discussed above, we can infer that the incentive given under the TUF Scheme was solely with the motive of helping the assessee-company in the purchase of the state of the art new machinery as exclusively specified in the scheme with the object of achieving modernization of the Textile Industry. However, both the AO and the Ld.CIT failed to appreciate the above fact and wrongly interpreted the motive of implementation of the said scheme as enhancement of profit of the units eligible under the scheme.

12. In the instant case before us, we found that pursuant to the TUF Scheme, the assessee-company proposed to import three embroidery machines from M/s. Saurar Hamel, Switzerland. With a view to import machinery, the assessee-company applied for a loan from the Bank of Baroda at a subsidized rate of interest in view of the TUF Scheme applicable to the Indian Textile Industry. Accordingly, the assessee company entered into a loan agreement with the concerned bank seeking an amount of Rs.5,19,75,000/- vide loan. Bank of Baroda sanctioned the loan of Rs.5,19,75,000/- for the specified purpose of buying the eligible machinery, as is evident from the sanction letter dated 24-3-2003, placed on record. It was only pursuant to the announcement of the TUF Scheme that the assessee-company proposed to buy new state of the art machinery as approved under the Scheme. Under the Scheme, the assessee-company acquired three multi-head computerized embroidery machines which were all imported from Switzerland. The interest subsidy was extended by the Govt. on the loan sanctioned for the specified purpose, being the acquisition of the state of the art new machines by the assessee company. It inevitably follows from above that the subsidy even though in the form of interest granted under the TUF Scheme for the named purpose i. e. acquisition of capital asset with a view to achieve modernization of the Textile Industry, in no way can be treated as a revenue receipt being relatable to the enhancement of profit of the assessee.

13. The contention of the Ld.CIT(A) that since the amount of interest received by the assessee as subsidy would have been claimed as revenue expenditure, the character of the receipt is of revenue nature, is devoid of any merit. This is because, it has already been decided in the case of Sahney Steel (supra) and Ponni Sugars and Chemicals Ltd.(supra) that it is not the mode of payment but it is the purpose for which the subsidy is granted which is decisive in determining the character of the incentive subsidy under a given scheme. Moreover, relying on the decision of the House of

Lords in the case of Sea ham Harbour Dock Co. v. Crook [1931] 16 TC 333 (HL) as followed by the Supreme Court, wherein even though the payment was equivalent to half the interest amount payable on the loan (interest subsidy) still the House of Lords held that money received by the company was not in the course of trade but was of capital nature.

14. The issue of subsidiary receipt under TUF Scheme is squarely covered by the decision of coordinate bench in the case of Gloster Jute Mills Ltd. {2014} 33 ITR (Trib) 322 (Kol), wherein the assessee received subsidy from the Central Government under the “technology upgradation fund scheme” by way of interest refund. In computing the assessable income the assessee deducted the amount on the ground that the subsidy was capital in nature. The AO held that the subsidy was revenue in nature and had to be added in the total income of the assessee as a revenue receipt. The CIT(A) confirmed this. On further appeal, the Tribunal held that in order to sustain competitiveness in the domestic as well as international markets and overall long-term viability of the industry, the Ministry adopted the “technology upgradation fund scheme” envisaging technology upgradation of the industry. Therefore, the subsidy received in that regard was capital in nature. The precise observation of the bench was as under :-

“7. We have heard the rival submissions and perused the material available on record. Ld. Counsel of the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of the Hon“ble Punjab & Haryana High Court in the case of CIT – vs.- Sh. Sham Lal Bansal in ITA No. 472 of 2010, wherein it had been held that interest subsidy received under TUF Scheme is capital in nature. Ld. Counsel for the assessee has further submitted that this issue is covered in favour of the assessee by the decision of the Hon“ble Apex Court in the case of CIT –vs.- Ponni Sugars & Chemicals Ltd. reported in (2008) 306 ITR 392 (SC) wherein it has been held that it is the purpose of the incentive which decides its nature and not the modality or the source thereof. That this issue is also favourably covered by the decision of Hon“ble jurisdictional High Court in the case of CIT –vs.- Rasoi Ltd. (2011) 335 ITR 438 (Cal.), wherein it has held that subsidy received for expansion of capacities, modernization and improving the marketing capabilities to tide over the crises for promotion of industry in the state is to be treated as capital in nature. That similarly, the issue is covered in the case of Shree Balaji Alloys &

Ors. –vs.- CIT (2011) 333 ITR 335 (J&K) wherein it has been held that excise duty refund and interest subsidy received for the purpose of eradication of unemployment in the state by acceleration of industrial development and removing backwardness of the area that lagged behind in industrial development is to be treated as capital receipt.

8. Ld. A.R. also submitted that similar view was given in following decisions:-

DCIT –vs.- Reliance Industries (2004) 88 ITD 273 (Mum.)(SB);  
CIT –vs.- Chaphalkar Brothers (2013) 351 ITR 309 (Bom.);  
CIT –vs.- Birla VXL Ltd. (2013) 90 DTR 376 (Guj.)(HC);  
Hydro Carbons & Chemicals –vs.- ACIT (ITA No. 1982-86/Kol/09 dated 29.04.2011); Indo Rama Synthetics (I) Ltd. –vs.- ACIT (2012) 33 CCH 526 (Del.)(ITAT).

9. Ld. Departmental Representative, on the other hand, relied upon the orders of the authorities below.

10. We have carefully considered the submissions. We find considerable cogency in the submissions of the Id. Counsel of the assessee. We find that identical issue under the Technology Upgradation Fund Scheme (in short „TUFS“) of Ministry of Textiles was considered by the Hon“ble Punjab & Haryana High Court in ITA No. 472 of 2010 vide decision dated 17.01.2011. Hon“ble High Court has considered and held the issue as under:-

“2. The assessee is engaged in manufacture and sale of woollen garments. It received subsidy for repayment of loan taken for building, plant and machinery under the Credit Linked Capital Subsidy Scheme under Technology Upgradation Fund Scheme (TUFS) of Ministry of Textiles, Government of India. The assessee claimed the said subsidy to be capital receipt but the Assessing Officer did not accept the same and added back the same to the income of the assessee holding the same to be revenue receipt. On appeal, the CIT(A) upheld the plea of the assessee, which view has been affirmed by the Tribunal with the following observations:-

“Having regard to the aforesaid, in our view, it is quite clear that the objective of the subsidy scheme was to enhance the technology apparatus of the assessee by assisting in acquiring machinery and further that the subsidy

so received was utilized for repayment of loans taken by the assessee to set up the new unit, as was the intention of the subsidy.

10. Considered in the aforesaid light, in our view, the facts of the instant case are on all fours comparable to those considered by the Hon<sup>ble</sup> Supreme Court in the case of Ponni Sugars & Chemicals Ltd. (supra) and therefore, a natural corollary is that the nature of the subsidy in question is capital. Therefore, both on the issue of the objective of the scheme and on the utilization of the funds received as subsidy, the subsidy is to be viewed as capital in nature having regard to the judgment of the Hon<sup>ble</sup> Supreme Court in the case of Ponni Sugars & Chemical Ltd. (supra).

11. Reliance placed by the Revenue on the case of Sawhney Steels and Press Works Ltd. & others (supra), in our view, is not appropriate having regard to the aforesaid features of the scheme, which are not in dispute. Moreover, in the case of Sawhney Steels and Press Works Ltd. & others (supra), it was found as a fact that the subsidy was given to meet recurring expenditure and was not for acquiring a capital asset. Whereas in the instant case, admittedly, there is no provision in the scheme to grant subsidy to meet any recurring expenditure and neither such a case has been set up by the Department. The only objections of the Department are that the subsidy has been given after commencement of production and, secondly that it was for repayment of loans. Both these factors do not distract from the nature of the subsidy being treated as capital, as explained by the Hon<sup>ble</sup> Supreme Court in the case of CIT vs. Ponni Sugars Chemicals Ltd. [2008] 306 ITR 392 (SC).

3. We have heard learned counsel for the appellant.

4. Learned counsel for the revenue submitted that the subsidy was not given at the time of setting up of the industry but after commencement of production for repayment of loan. In such situation, the amount should have been treated as revenue receipt as per judgment of the Hon<sup>ble</sup> Supreme Court in Sahney Steel & Press Works Ltd. & Ors. v. CIT (1997) 228 ITR 253.

5. We are unable to accept the submission.

6. The purpose of scheme under which the subsidy is given, has been discussed by the Tribunal. To sustain and prove the competitiveness and overall long term viability of the textile industry, the concerned Ministry of Textile adopted the

TUFS scheme, envisaging technology upgradation of the industry. Under the scheme, there were two options, either to reimburse the interest charged on the lending agency on purchase of technology upgradation or to give capital subsidy on the investment in compatible machinery. In the present case, the assessee has taken term loans for technology upgradation and subsidy was released under agreement dated 12.7.2005 with Small Industry Development Bank of India. The relevant clause of the agreement under which the subsidy was given is as under:-

“Para 8. - to prevent misutilization of capital subsidy and to provide an incentive for repayment, the capital subsidy will be treated as a non interest bearing term loan by the Bank/Fis. The repayment schedule of the term loan however will be worked out excluding the subsidy amount and subsidy will be adjusted against the term loan account of the beneficiary after a lock in period of three years on a pro-rate basis in terms of release of capital subsidy. There is no apparent or real financial loss to a borrower since the countervailing concession is extended to the loan amount.”

7. In view of above, the view taken in Sahney Steel & Press Works Ltd. & Ors., could not be applied in the present case, as in said case the subsidy was given for running the business. For determining whether subsidy payment was „revenue receipt“ or „capital receipt“, character of receipt in the hands of the assessee had to be determined with respect to the purpose for which subsidy is given by applying the purpose test, as held in Sahney Steel & Press Works Ltd. & Ors. itself and reiterated in later judgment in CIT v. Ponni Sugars & Chemicals Ltd. & ors. (2008) 306 ITR 392, referred to in the impugned order of the Tribunal.

8. In view of above, since the matter is covered by judgment of the Hon“ble Supreme Court in CIT v. Ponni Sugars & Chemicals Ltd. & ors. [2008] 306 ITR 392(SC) against the revenue, no substantial question of law arises”.

11. Thus we find that on identical issue the matter has been decided in favour of the assessee. In these circumstances, we are of the opinion that as held hereinabove in order to sustain competitiveness in the domestic as well as international markets and overall long-term viability of the industry, the concerned Ministry adopted the TUFS scheme envisaging Technology Upgradation of the Industry. Hence, the subsidy received in this regard falls

into capital field. Hence respectfully following the precedent as above we set aside the order of the Id. CIT(Appeals) and decide the issue in favour of the assessee.

10. In the result, the appeal filed by the assessee stands allowed.”

15. In view of the above discussion, we do not find any merit in the order passed by the lower authorities treating the subsidy so received as revenue receipts. Accordingly, the AO is directed to treat the subsidiary in all the years under consideration are capital in nature.

16. In the result, all appeals of the assessee are allowed.”

4. Considering the decision of Tribunal in assessee’s own case for AY 2005-06 and 2007-08 to 2009-10, we do not find any illegality or infirmity in the order passed by Id. CIT(A), therefore, the grounds of appeal raised by Revenue are rejected.
5. In the result, appeal of Revenue is dismissed.

Order pronounced in the open court on 20.06.2018.

**Sd/-**  
**G.S. PANNU**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 20.06.2018

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**Copy of the Order forwarded to :**

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| <b>1. Assessee</b>                   | <b>2. Respondent</b>        |
| <b>3. The concerned CIT(A)</b>       | <b>4. The concerned CIT</b> |
| <b>5. DR “J” Bench, ITAT, Mumbai</b> |                             |
| <b>6. Guard File</b>                 |                             |

**BY ORDER,**  
**Dy./Asst. Registrar**  
**ITAT, Mumbai**