

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Shri, M. Balaganesh, Accountant Member**

**ITA No.845/Kol/2017**  
Assessment Year :2008-09

ACIT, Circle-2(2), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700 069	<b>V/s.</b>	M/s The State Fisheries Development Corporation Ltd., Bikash Bhawan, 1 <sup>st</sup> Floor, North Block, Bidhan Nagar, Kolkaa-91 <b>[PAN No.AABCT 2090 D]</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Robin Choudhury, Addl. CIT-SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Amit Saraf, FCA
सुनवाई की तारीख/Date of Hearing	04-12-2018
घोषणा की तारीख/Date of Pronouncement	26-12-2018

**आदेश /ORDER**

**PER S.S.Godara, Judicial Member:-**

This Revenue's appeal for assessment year 2008-09 arises against the Commissioner of Income Tax (Appeals)-17,Kolkata's order dated 22.12.2016 passed in case No.300/CIT(A)-17/Kol/14-15 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The Revenue's sole substantive grievance pleaded in the instant appeal reads that CIT(A) has erred in law as well as on facts thereby holding that the assessee's impugned grant-in-aid of ₹4.68 crores received from government of West Bengal is a capital receipt not liable to tax vide following detailed discussion:-

*"Decision:*

*This ground of the assessee is general in nature, hence, not adjudicated upon.*

3.2 Ground No.2 & 3:

"For that on the facts and the circumstances of the case, the action of the Ld AO in adding back the grants in aid amounting to Rs.4.68 crores received by the assessee to the total income by considering the same as revenue receipt is arbitrary, unwarranted, unjustified and illegal."

"For that on the facts and the circumstances of the assessee, the Ld. AO should be directed to consider the Grants in Aid amounting to Rs.4.68 crores as a capital receipt."

The assessee has filed a detailed submission on this issue which is as under:

"The appellant is a Government of West Bengal Undertaking and during the year under consideration the appellant had received Grant in aid amounting to Rs. 4.68 crores from its sole shareholder i.e Government of West Bengal.

The said Grand in aid was received for the following purposes:-

- i) Grant received from Government of WB for Salary &.3.60 crores
- ii) Grant received from Government of WB for pisciculture &.80 lacs
- iii) Grant received from Government of WB for River Renching &.28 lacs

*The appellant had treated the said grant in aid as capital receipt. However, the Ld AO had disallowed the same as he was of the view that the grant- in- aid was a revenue receipt. The Ld AO had disallowed the same mainly relying upon the assessment order of the earlier years in which the then assessing officer had also disallowed the grant-in-aid.*

*In this regard it may be noted that the Ld AO had also made an addition on identical issues in the assessment year 2005-2006 and Hon'ble CIT(A) had also affirmed the additions. However on further appeal the Hon'ble Jurisdictional ITAT had deleted the entire addition and reversed the order of the Id AD. The copy of the said order is enclosed herewith.*

*During the course of hearing before your honour on 23.05.2016, when this fact was brought to your honour's notice that the Hon'ble ITAT has upheld the view taken by appellant that the grant-in-aid was a capital receipt, your honour have accepted that findings of the Hon 'ble ITAT in respect of grant-in aid which relates to salary of Rs.3.60 crores and asked us to explain why grant-in- aid which relates to pisciculture and River dredging amounting to &.80 lacs and &.28 lacs respectively will also deemed to be covered by this ruling of the ITAT.*

*In this regard it may be noted that the Hon'ble ITAT had allowed the appeal of the appellant by observing as under:-*

*"From the aforesaid decision we observe that the subsidies were given to the class of industries as per the schemes designed by the respective governments. The purpose of the aforesaid subsidies was to promote the certain class of industries provided, they meet the eligibility criteria laid down in those scheme. However, in the instant case we find that the grant in aid was given to the assessee exclusively and there was no scheme as such. Therefore in our considered view the case law cited by AO in the case of Sahney Steel & Press Works Ltd. (supra) are different from the instant case of the assessee, as it was given for the specific payment of salary and PF.*

*"We find that the grant given by the Government to the assessee was not as per the scheme design for the promotion of some class of industries but it was given by the Government being a sole*

shareholder of the assessee company. In our considered view, the ration laid down by the Hon 'ble Delhi High Court in the case of CIT vs Handicrafts and Handlooms Export Corporation of India Ltd (2014) 360 ITR 130 (Del) is applicable to the assessee"

*From the above observation it appears that the Hon 'ble ITAT had given relief based on the relationship between the Government of West Bengal and assessee being that of shareholder and Company as against the other cases where the relationship was that of Government and Industry.*

*If the Government of West Bengal would have given similar types of grant-in-aid to other companies also on the basis of some schemes then the said grant-in-aid would not have been considered as capital receipt as the nature of relationship of giver and taker becomes changed from Government to Industries.*

*In the instant case Government of West Bengal is a sole shareholder of the appellant and it had given the grant-in-aid to it in the capacity of 1 00% shareholder and not in the capacity of government and this issue has been dealt with at length in the decision of Hon'ble ITAT as well as Hon 'ble Delhi High Court based on which the ITAT had deleted the addition.*

*Therefore the all types of grant-in-aid are covered by the said decision of Hon'ble ITAT Kolkata Benches in our opinion and it is submitted that the entire addition in this regard be deleted"*

*The issue is whether the Grant in aid of Rs.4.68 crores received from the Government of West Bengal is a revenue receipt or a capital receipt. The A.O. has held the same to be a revenue receipt and has brought it to tax. The assessee argues that the same is a capital receipt and has placed reliance on the decision of the jurisdictional ITAT, in his own case for A.Y. 2005-06 and 2006-07. The Hon'ble ITAT vide their order dtd. 19-04-2016 for A.Y. 2005-06 have dismissed the appeal of revenue on this ground. The operative para stating the decision is as under:*

*"Accordingly, we answer the question of law against the Revenue and in favour of the assessee. The lower authorities have also made the addition on the ground that similar disallowance was made in the earlier assessment year 2003-04. In this connection, we find that the A.O. made the addition of grant-in-aid for Rs.48,22,698/- in the assessment year 2003-04 but the A.O. in the assessment year 2004-05 has allowed the relief of grant-in-aid for Rs.44 lacs. From the facts of the case, we find that grant-in-aid for Rs.48,22,698/- pertaining to the assessment year 2003-04 was allowed in the immediate subsequent assessment year 2004-05 for Rs.44 lacs. The Id A/R has produced the copies of the assessment orders for the Ays 2003-04 and 2004-05 in support of its claim and the same are placed on the record Similarly, we also find that the grant-in-aid received by the assessee in the assessment year 2004-05 was not disallowed by the A.O. The Ld DR failed to bring anything on record contrary to the argument of the Ld. A/R and he left the issue to the discretion of the Bench. In view of the above, and in the interest of justice, we are inclined to treat the grant-in-aid as capital in nature, therefore, it is not liable to tax. "*

*Decision:*

*In allowing the appeal of the assessee, Hon 'ble Tribunal has relied on the decision of the Delhi High Court in the case of Handicrafts & Handlooms Export Corporation of India Ltd. ITR 130 (Del) for the proposition that the grant given by the West Bengal Government assessee was in the capacity of the sole share holder of the company.*

*Respectfully following the above decision of the jurisdictional ITAT, the grant in aid received from the W.B Govt. is treated as capital in nature and the appeal of the assessee on this issue is treated as followed.”*

We find that the above Revenue's impugned sole grievance seeking to revive Assessing Officer's action treating grant-in-aid issue to be revenue receipt is no more *res integra* as hon'ble jurisdictional high court's decision in its own case (2018) 94 taxmann.com 466 (Cal) *PCIT Kolkata-1 vs. State Fisheries Development Corporation Ltd.* for assessment year 2006-07 has upheld learned co-ordinate bench's order upholding the CIT(A)'s similar stand in said earlier assessment year. There is no distinction on facts or law highlighted at the Revenue's behest. We adopt judicial consistency to affirm CIT(A)'s findings under challenge.

3. This Revenue's appeal is dismissed.

Order pronounced in the open court 26/12/2018

Sd/-  
(लेखा सदस्य)  
(M.Balaganesh)  
(Accountant Member)  
Kolkata,  
\*Dkp, Sr.P.S

दिनांक:- 26/12/2018 कोलकाता ।

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
(Judicial Member)

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-ACIT, Cir-2(2), Aayakar Bhawan, P-7, Chowringhee Sq. Kolkata-69
2. प्रत्यर्थी/Respondent-M/s The State Fisheries Development Corporation Ltd., Bikash Bhawan, 1<sup>st</sup> Fl, North Block, Bidhan Nagar, Kolkata-91
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।