IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1129/PUN/16
निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Alkoplus Producers Pvt. Ltd., Plot No.3, Additional MIDC, Latur – 413 512 PAN : AABCI5135L	**Vs.**	DCIT, Circle -3, Nanded
(Appellant)		(Respondent)

आयकर अपील सं. / ITA Nos.1222/PUN/16 and 23/PUN/2017
निर्धारण वर्ष / Assessment Years : 2011-12 and 2012-13

DCIT, Latur Circle, Latur ACIT, Latur Circle, Latur	**Vs.**	M/s. Alkoplus Producers Pvt. Ltd., Plot No.3, Additional MIDC, Latur – 413 512 PAN : AABCI5135L
(Appellant)		(Respondent)

C.O. Nos. 37 and 61/PUN/2018
(Arising out of ITA Nos. 1222/PUN/2016 and 23/PUN/2017
निर्धारण वर्ष / Assessment Years : 2011-12 and 2012-13

M/s. Alkoplus Producers Pvt. Ltd., Plot No.3, Additional MIDC, Latur – 413 512 PAN : AABCI5135L	**Vs.**	DCIT, Latur Circle, Latur
Cross Objector		Appellant in the appeal

Assessee by	Shri Rajan Vora & Shri Rajendra Agiwal
Respondent by	Ms. Nandita Kanchan
Date of hearing	03-04-2019
Date of pronouncement	04-04-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This batch of five appeals comprises of 3 cross appeals including a cross objection for the assessment year 2011-12 and two cross appeals for the assessment year 2012-13. Since some of the issues raised in these appeals are common, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2011-12 :

2. The first ground of the Revenue's appeal (ITA No.1222/PUN/2016) is against the deletion of addition of Rs.11,29,894/- made by the Assessing Officer (AO) on account of disallowance of commission payment.

3. Briefly stated, the facts of the case are that the assessee is engaged in the manufacturing of extra neutral alcohol from grain (jawar). It paid commission of Rs.22,59,788/- to Kasturchand Raghunath & Sons. On being called upon to substantiate the payment, the assessee submitted vouchers and bills for the payment of such commission. The AO observed that some of the bills were handmade and self-made vouchers and further there were discrepancies in some vouchers and bills. He made disallowance at 50% of total commission paid by the assessee, which resulted into an addition of Rs.11,29,894/-. The ld. CIT(A) deleted the addition.

4. Having heard both the sides and gone through the relevant material on record, it is observed that the assessee paid commission of Rs.22.59 lakhs to Kasturchand Raghunath & Sons, which fact was clearly stated before the AO as has also been recorded in the assessment order. Not only that, the assessee also furnished details of commission. The AO proceeded to make an *ad hoc* disallowance at 50% of commission without even endeavoring to verify the genuineness of such payment from Kasturchand Raghunath & Sons. He simply stated that vouchers were handmade and there were discrepancies in some vouchers and

bills. He, however, failed to spell out any such discrepancy in any of the vouchers produced by the assessee. Under the given circumstances, we are satisfied that the ld. CIT(A) was justified in deleting the addition. We, therefore, uphold the same.

5. The second ground of the Revenue's appeal is against deletion of addition on account of interest on interest-free loans. Briefly stated, the facts of this ground are that the AO observed during the course of assessment proceedings that the assessee gave advance of Rs.2,03,05,669 and Rs.62,65,000/- to Vyanjan Hotels and Indo Sprint respectively, without charging any interest. It was further found that the assessee did pay interest. The AO made disallowance at 12% of the loan amount of Rs.2.65 crore, which resulted into an addition of Rs.31,88,480/-. The ld. CIT(A) allowed part relief and sent some part of the addition back to the AO for verification with certain directions. Though the assessee is also in appeal, but the part of the impugned order challenging the re-verification by the AO, has not been assailed before the Tribunal. Thus, to that extent the impugned order has attained finality.

6. We have gone through the relevant material on record and heard both the sides. The ld. CIT(A) has categorically recorded that the assessee did charge interest @9% aggregating to Rs.4,34,398/- on the advance of Rs.62,65,000/- given to Indo Sprint. Such an interest was shown as receivable in the books of account of the assessee. This finding has not been controverted on behalf of the Revenue. In our considered opinion, no exception can be taken to the view canvassed by the ld. CIT(A) on this issue in deleting the addition to this extent.

7. As regards the second component of disallowance of interest on Rs.2.03 crore, being advance given to Vyanjan Hotels, it is seen that the assessee contended before the ld. CIT(A) that this amount was given for purchase of shares of that company. The assessee furnished details of the shares which it was intending to purchase. The ld. CIT(A) restored the issue to the AO and directed him to find out if shares of the company were allotted to it. If it was found that the shares were not allotted to the assessee company after making the payment, then the interest cost would be taken to shares account and added to their cost of acquisition and in the otherwise scenario it should be taken as revenue expenditure. We do not find any grievance on the part of the Revenue in asmuchas

the ld. CIT(A) has adopted a legally valid view. The ld. AR submitted that the shares were in fact allotted and the assessee has no objection if the amount of interest was capitalized. Under the given circumstances, we countenance the impugned order to this extent.

8. Ground No.3 of the Revenue's appeal is against deletion of addition of Rs.13,76,60,000/- on account of subsidy and ground no. 1 of the assessee's appeal is against the direction of the ld. CIT(A) that the amount of subsidy should be reduced from the cost of assets in terms of Explanation 10 to section 43(1) of the Income-tax Act, 1961 (hereinafter also called ` the Act').

9. Succinctly, the facts of these grounds are that the assessee received financial assistance granted by the Government of Maharashtra to eligible units under the Financial assistance to Grain Distillery Scheme, 2007. The AO has highlighted the important features of the scheme in the assessment order. It has been mentioned that the scheme was brought out to encourage investments in grain based distilleries in the backward regions of Maharashtra State. Such subsidy was paid to the assessee in the form of rebate of Rs.10/- per litre and Excise duty was repaid on the products supplied. The AO held that the subsidy was revenue

in nature. The ld. CIT(A) overturned the assessment order on this point. He, however, held that the amount of subsidy should be reduced from the cost of assets in view of Explanation 10 to section 43(1) of the Act. Both the sides are in appeal on their respective stands.

10. We have heard both the sides and gone through the relevant material on record. It can be seen from the text of the scheme dated 08-07-200, relevant part of which has been reproduced in the assessment order that the main purpose of providing financial assistance under the scheme was : "to encourage investment in grain based distilleries in the backward regions of the Maharashtra State". Once the object of the scheme is to encourage setting up of new units, the grant has to be held as a capital receipt. This is a settled legal position which follows from the judgment of the Hon'ble Supreme Court in *CIT Vs. Ponni Sugar and Chemicals Ltd. (2008) 306 ITR 392 (SC)* in which it has been categorically held that if subsidy is given, *inter alia,* for expansion, then it is a capital receipt irrespective of the fact that it is given in any form. Adverting to the facts of the instant case, we find that the subsidy was given to the assessee to establish the industrial unit in backward regions of the Maharashtra State. Even if such subsidy

was quantifiable in the form of rebate of Rs.10/- per litre on the Excise duty, but the purpose of its grant, which is to accelerate the industrial development in grain based distilleries in the backward regions of the Maharashtra State, does not alter the nature of subsidy from capital to a revenue receipt. Considering the mandate of the scheme issued by the Government of Maharashatra, it becomes clear that the subsidy is a capital receipt not a revenue receipt. The impugned order is upheld to this extent.

11. At this stage, it is relevant to mention that the Hon'ble Supreme Court in *CIT Vs. P.J. Chemicals (1994) 210 ITR 830 (SC)* held that subsidy received in Central Scheme is a Capital receipt and the same should not be reduced from the cost of assets for depreciation. The legislature introduced Explanation 10 to section 43(1) with effect from the assessment year 1999-2000 providing that subsidy on assets acquired after this date should be reduced from the cost of asset. The ld. CIT(A) has taken cognizance of Explanation 10 in directing that the amount of subsidy should be reduced from the cost of asset. In our considered opinion, the view so adopted by the ld. CIT(A) is not in accordance with law in asmuchas this explanation gets activated where the subsidy is specifically relatable to cost of a particular asset. The language of

Explanation 10 clearly states that : "*where a portion of the cost of an asset* acquired by the assessee *has been met directly or indirectly by the Central Government* or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee'. Proviso to this Explanation states that : where *such subsidy* or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee'. On going through the language of the Explanation 10, it is manifest that it is attracted only when the object of the Scheme is to subsidize the cost of an asset and not otherwise. Proviso also refers to `such subsidy' only. If the object of the Scheme is to accelerate the industrial development of the State, then the case is not caught within the mandate of the Explanation 10. Similar view has been taken by various benches of the tribunal in several decisions, including

Sasisri Extractions Ltd. VS. ACIT (2010) 122 ITD 428 (Visakhapatnam). The Mumbai bench of the Tribunal in *Godrej Agrovet Ltd. VS. ACIT* in ITA No. 1629/Mum/09 has also taken a similar view vide its order dated 17.9.2010. Though the Department preferred an appeal against this Tribunal order, but did not challenge the finding returned by the Tribunal on this aspect. Copy of the Tribunal order and the judgment of the Hon'ble Bombay High Court have been placed on record.

12. To deal with such a situation, the Finance Act, 2015, w.e.f. 1.4.2016, has enlarged the definition of income given u/s 2(24) by inserting sub-clause (xviii), which reads as under :-

> `(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43;'

13. A bare reading of the above provision makes it explicit that now subsidy given by the Central Government or a State Government or any authority etc. *for any purpose,* except where it is taken into account for determination of the actual

cost of the asset under Explanation 10 section 43(1), has become chargeable to tax. Even if a subsidy is given to attract industrial investment or expansion, which is a otherwise a capital receipt under the pre-amendment era, shall be treated as income chargeable to tax, except where it has been taken into account for determining the actual cost of assets in terms of Explanation 10 to section 43(1). This amendment is patently prospective. As the assessment year under consideration is 2011-12 and the amendment is effective from assessment year 2016-17, new hold that section 2(24) (xviii) will have no application. In view of the foregoing discussion, we are satisfied that the subsidy received by the assessee from the Government of Maharashtra is a capital receipt and accordingly not chargeable to tax and at the same time, it is not liable to be reduced from the cost of assets for the purposes of depreciation in the year under consideration. Thus, the ground raised by the Revenue is dismissed and that of the assessee is allowed.

14. There is no other effective ground raised by the assessee in its appeal.

15. The cross objection filed by the assessee is in support of the impugned order which has become academic in view of our decision on the appeal filed by the Revenue.

16. In the result, the appeal of the Revenue is dismissed; that of the assessee is allowed; and the cross objection is dismissed as having become infructuous.

A.Y. 2012-13 :

17. The only issue raised by the Revenue in its appeal is against the direction of the ld. CIT(A) to treat the subsidy received by the assessee in the instant year from Government of Maharashtra under Grain Distillery Scheme, as a capital receipt and the assessee is aggrieved by the decision of the ld.CIT(A) in holding that the amount of the subsidy should be reduced from the cost of assets for the purposes of depreciation.

18. The factual panorama of the issue is that the assessee received subsidy of Rs.6,30,40,000/- during the year under the same scheme as continuing from the preceding year. The AO treated the amount as of revenue character. The ld. CIT(A) held the amount to be in the nature of capital receipt but also applied Explanation 10 to section 43(1).

19. We have heard both the sides and gone through the relevant material on record. A common submission has been made by both the sides that the facts and circumstances of the instant appeals are *mutatis mutandis* similar to those of the preceding year. Following the view taken herein above, we uphold the action of the ld. CIT(A) in treating the subsidy as a capital receipt and overturn his view on the question of application of Explanation 10 to section 43(1) of the Act to the facts of the instant case.

20. In the result, the appeal of the Revenue is dismissed and that of cross objection of the assessee is allowed.

Order pronounced in the Open Court on 04th April 2019.

Sd/-	Sd/-
(VIKAS AWASTHY)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 04th April, 2019
सतीश

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u>:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
   The CIT (Appeals)-2, Aurangabad
4. The Pr. CIT-2, Aurangabad
   विभागीय प्रतिनिधि, आयकर अपीलीय
5. अधिकरण, पुणे "B" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	03-04-2019	Sr.PS
2.	Draft placed before author	03-04-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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