

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 1602/CHD/2017

निर्धारण वर्ष / Assessment Year : 2008-09

M/s Greencone Environs Pvt Ltd., SCO 18-19, First Floor, Sector 8C Chandigarh	बनाम	The DCIT, Circle 1(1), Chandigarh
स्थायी लेखा सं./PAN NO: AACCG1175D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rohit Goel,
(proxy counsel)

राजस्व की ओर से/ Revenue by : Shri Arvind Sudershan, Sr. DR

सुनवाई की तारीख/Date of Hearing : 28.11.2019

उदघोषणा की तारीख/Date of Pronouncement : 28.11.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 29.09.2017 of the Commissioner of Income Tax (Appeals)-1, Chandigarh [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken following effective grounds of appeal:-

1. *That the order passed dated 29.9.2017 under section 250(6) of the Income Tax Act, 1961 by the Ld. CIT(A)-1 Chandigarh in appeal No.583/10-11 is contrary to law and facts of the case.*
2. *That in the facts and circumstances of the case and in law, the Ld. CIT(A) gravely erred in upholding the order of the Ld. DCIT, Circle 1(1) Chandigarh under which the capital subsidy was treated as Revenue receipt and made an addition of Rs. 2,50,00,000/- which is against the settled law.*
3. The sole issue raised in this appeal is regarding the nature of subsidy received by the assessee vide letter No. 1-3/2205-CT dated 26.3.2008, whereby the Ministry of Finance has granted a subsidy of Rs. 2,50,00,000/- to the assessee for setting up a Legnin Precipitation System (LPS) Technology Project for a total cost of Rs. 11,50,00,000/-. The contention of the Revenue is that the same is a Revenue receipt, whereas, the contention of the assessee is that it is a capital receipt as it has been received by the assessee as an incentive from the Government for establishment and setting up a Legnin Precipitation System (LPS) Technology Project.

However, before us, the respective notification of the Government has not been furnished from which the nature of subsidy can be ascertained. The issue, as to the grants / subsidies of which nature are to be treated as Revenue receipt, and which type of grants / subsidies

are capital receipt, otherwise, has been settled by the Hon'ble Supreme Court in the case of 'CIT-I Vs. M/s Chaphalkar Brothers, Pune' and Others in Civil Appeal Nos. 6513-6514 of 2012 order dated 7.12.2017 . The Hon'ble Supreme Court while deliberating on the other decisions of the Supreme Court in the cases of 'Sahney Steel & Press Works Ltd. Hyderabad Vs. CIT, A.P.-1, Hyderabad Vs. 1997 (7) SCC 765, 'CIT, Madras Vs. Pooni Sugars and Chemicals Limited' 2009 (9) SCC 337 and further of the Hon'ble J&K High Court in the case of 'Shri Balaji Alloys Vs. CIT' (2011) 333 ITR 335, has held that to gather any of the receipts as to the same are capital or Revenue in nature, 'purpose test' is to be applied. If the purpose is for the setting up of new industry, then the receipts are to be considered as capital in nature. However, if the receipts are in the nature of facilitation / helping hand of the trade, the same is construed Revenue in nature. What is Important, is the object for which the subsidy / incentive is granted. That the object is carried out in a particular manner is irrelevant. Once the object of the subsidy was to industrialize the State and to generate employment in the State, the fact that a subsidy took a particular form and that it was granted only after commencing of production, would not make any difference. The Hon'ble Supreme Court made reference to the decision of the Hon'ble J&K High Court in the case of 'Shri Balaji Alloys v CIT' (supra), wherein, the Hon'ble High Court has held,

while considering the scheme of refund of excise duty and interest subsidy, has held that the scheme was capital in nature despite the fact that the incentives were not available until and unless the commercial production has started and justified the fact that these incentives were not given to the assessee expressly for the purpose of capital assets.

4. Both the Ld. Representatives of the parties submitted that the issue is required to be restored to the file of the CIT(A) to look into the nature of the subsidy received in the light of the notification of the Government as well as in the light of the decision of the Hon'ble Supreme Court in the case of 'CIT-I Vs. M/s Chaphalkar Brothers, Pune' and Others (supra). Accordingly, the impugned order of the CIT(A) is hereby set aside and the matter is restored to the file of the CIT(A) for decision afresh as per the observations made above.

The appeal of the assessee is treated as allowed for statistical purposes.

Order dictated and pronounced in the Open Court immediately on completion of hearing on 28.11.2019.

Sd/-

(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

Dated : 28.11.2019

“आर.के.”

Sd/-

(संजय गर्ग / SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar