

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.599/Viz/2019
(निर्धारण वर्ष/Assessment Year:2013-14)**

Dy.Commissioner of Income Tax
Circle-3(1)
Visakhapatnam

Vs. M/s Kalyan Aqua & Marine
Exports India Pvt. Ltd.,
MIG-25B, Lawsons Bay Colony
Visakhapatnam
[PAN : AADCK2221M]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Smt U.Mini Chandran, DR
: Shri T.V.U.B.S.Kishore Babu, AR

सुनवाई की तारीख / Date of Hearing : 20.02.2020
घोषणा की तारीख/Date of Pronouncement : 26.02.2020

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam in I.T.A.No.10155/2018-19/CIT(A)-1/VSP dated 30.07.2019 for the Assessment Year (A.Y.)2013-14.

2. All the grounds of appeal are related to the taxing the sum of Rs.1,57,64,866/- relating to the capital subsidy u/s 115JB of the Income Tax Act, 1961 (in short 'Act'). Brief facts of the case are that the assessee has filed the return of income admitting 'Nil' income after setting off of the loss of Rs.1,10,98,406/- under Minimum Alternate Tax (MAT). The case was selected for scrutiny and the Assessing Officer (AO) found that the assessee had received the capital subsidy of Rs.1,57,64,866/- which was directly taken to the balance sheet without routing it through the Profit & Loss account. Therefore, the Assessing Officer (AO) viewed that the assessee has reduced the book profits to the extent of capital subsidy received by the assessee and the same required to be brought to tax u/s 115JB of the Act. Accordingly, the AO made the addition to the income u/s 115JB of the Act.

3. Against which the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition made by the AO holding that the capital subsidy received by the assessee required to be capitalized and depreciation is to be allowed on the cost of the asset reducing the subsidy portion from the original cost of the asset. For the sake of clarity and

convenience, we extract relevant part of the order of the Ld.CIT(A) in page No.6 of the order which reads as under :

"I have carefully considered the facts of the case and the written submission made by the Ld. AR of the appellant. As in the case of revenue subsidy, the ICDS also covers the Government grants and its treatment in the books for computing income.

"ICDS VII(5) reads: where the Government grant relates to a depreciable fixed asset or assets of a person, the grants shall be deducted from the actual cost of the asset or assets concerned or from the WDV of block of assets to which the concerned asset or assets belong to."

Therefore in the instant case, there is no doubt that the subsidy is capital in nature and the asset acquired is eligible for depreciation. Thus, I find merit in the argument of the appellant. The Assessing Officer is directed to delete the addition of Rs.1,57,64,866/-."

4. Against which the department has filed appeal before this Tribunal. During the appeal hearing, the Ld.DR argued that the subsidy received by the assessee required to be routed through the Profit & Loss account for computing the profits u/s 115JB of the Act. The Ld.DR further argued that the assessee did not compile the Profit & Loss account as required under the Companies Act. Neither he has taken the subsidy to the respective capital asset nor he has declared separately. Therefore, argued that the AO is right in taxing the same u/s 115JB of the Act.

5. On the other hand, the Ld.AR submitted that the amount received or receivable by the assessee was capital subsidy for setting up of the unit which is not a revenue receipt. Therefore, the same goes to reduce the cost

of capital asset, thus reduces the cost of asset and the depreciation required to be allowed on the remaining balance. He further submitted that the subsidy was not received by the assessee in the year under consideration and it was shown in cash flow statement pending receipt from the Government authorities thus, argued that it was contingent in nature and hence, the same was neither capitalized nor shown in the assets side. The Ld.AR further submitted that the assessee has prepared the Profit & Loss account in accordance with the provisions of section 115JB of the act and the provisions of Part II and III of the Schedule VI of the Companies Act and the same was adopted in the Annual General Meeting. The company has neither violated the Company Law nor the accounting policies and accounting standards, therefore, argued that the AO is not permitted to disturb the Profit & Loss account prepared as per Part II of Schedule VI of the Companies Act. The Ld.AR argued that as per the normal provisions, capital assets goes to depreciate the assets and is not taxable u/s 50 r.w.s.2(14) & 2(47) of the Act. Applying the same analogy, the capital subsidy cannot be brought to tax under section 115JB of the act. Accordingly, argued that the capital subsidy received by the assessee is capital in nature and not revenue receipt, therefore, cannot be brought to tax u/s 115JB of the Act.

6. We have heard both the parties and perused the material placed on record. There is no dispute that the amount receivable by the assessee was capital subsidy, but not revenue in nature. As per the decided case laws, the capital subsidy goes to reduce the cost of asset and it does not go to the income. Though the assessee is entitled to receive the capital subsidy, since the assessee did not receive the subsidy from the Government, the same was not capitalized in the books. As submitted by the Ld.AR on receipt of capital subsidy, the same was capitalized in the subsequent assessment year and reduced the same from capital assets and claimed the depreciation on the balance amount of assets. Though the assessee has right to receive the subsidy, unless the subsidy is granted by the concerned Government authorities, the same can't be stated to have been crystalized to take into books of accounts. Thus, the assessee did not capitalize the subsidy, pending receipt from the Government. Once the subsidy was received, the same was taken to the respective capital assets and claimed the depreciation thereon. Since the subsidy is a capital receipt, there is no provision u/s 115JB to make the adjustment for computing the book profits u/s 115JB of the Act. Similar issue has come up before this Tribunal in Andhra Trade Development Corporation in I.T.A. No.233/Viz/2017 dated 12.12.2018 and this Tribunal has taken a decision that the AO is not

permitted to disturb the book profits arrived by the assessee unless it is permitted by the provisions of section 115JB of the Act. In the instant case there was no profit derived by the assessee in the ordinary course of business and the receipt was a capital receipt. The assessee has not shifted the business profits to the balance sheet. As per section 115JB, the AO is permitted to make only the adjustments as provided in 115JB of the Act, therefore, we hold that the Ld.CIT(A) has rightly deleted the addition made by the AO u/s 115JB and the same is upheld. Accordingly, the appeal of the revenue is dismissed.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 26th February, 2020.

Sd/- (वी.दुर्गा राव) (V. DURGA RAO)	Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH)
न्यायिकसदस्य/JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER
विशाखापटणम /Visakhapatnam	
दिनांक /Dated : 26.02.2020	
L.Rama, SPS	

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

1. राजस्व/The Revenue -Dy.Commissioner of Income Tax, Circle-3(1), Visakhapatnam
2. निर्धारित/ The Assessee-M/s Kalyan Aqua & Marine Exports India Pvt. Ltd., MIG-25B, Lawsons Bay Colony, Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam