

आयकर अपीलीय अधीकरण, न्यायपीठ –“B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष)श्री पी. एम.जगताप,उपाध्यक्ष एवं श्री ए.टी. वर्की,न्यायिक सदस्य
 [Before Shri P.M. Jagtap, Vice President (KZ) &Shri A. T. Varkey, JM]

ITA No.2520/Kol/2018
Assessment Year: 2010-11

Deputy Commissioner of Income-tax, Circle-3(1), Kolkata.	Vs.	M/s. SovaIspat Limited (PAN: AAHCS4673H)
Appellant		Respondent
Date of Hearing	22.01.2020	
Date of Pronouncement	29.05.2020	
For the Appellant	ShriDhrubajyiti Roy, JCIT, Sr. DR	
For the Respondent	Shri A. K. Tulsiyan, FCA	

ORDER

Per A. T. Varkey, JM:

This is an appeal preferred by the revenue against the order of Ld. CIT(A)-17, Kolkata dated 28-09-2018 for the assessment year 2010-11.

2. The sole ground of appeal of revenue is against the action of the Ld. CIT(A) in deleting the addition of industries promotion assistance [IPA] of Rs.1,96,77,000/- received as subsidies by assessee under the West Bengal Incentive Scheme 2000 (in short, ‘WBIS 2000’) and treating it as a capital receipt while the AO treated the same as revenue receipt and made the addition.

3. Briefly stated facts as observed by the AO are that the assessee company filed its return of income on 04.10.2010 declaring total income of Nil. Subsequently Revised return was filed by the assessee on 29.09.2011 declaring total income of Rs. 2,49,72,665/- and claimed deduction in the computation of taxable income treating it as capital receipt. Assessment was made u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) on 22.03.2013 at assessed income of Rs. 2,51,90,665/-. Thereafter the assessment was revised by Ld. PCIT-I, Kolkata and consequently he gave direction to the A. O. vide order u/s. 263 of the Act dated 19.03.2015 to pass a fresh assessment order after considering

his observation. As per direction of Ld. PCIT -I. Kolkata the A.O passed the order u/s. 263/143(3) on 12.11.2015 assessing the income at Rs. 4,50,78,115/- by making addition of Rs. 1,96,77,00/-the subsidy from the Govt. of W.B. & unpaid liability of Gratuity of Rs. 2. 10,450/-. During the course of re-assessment the AO found that the assessee credited in P&L Account an amount of Rs.2,33,51,560/- received from West Bengal Industrial Development Corporation (in short 'WBIDC') as Industrial Promotion Assistance (in short, 'IPA'). According to AO, in the original return the assessee treated it as revenue receipt but in the revised return the assessee changed tact and claimed deduction of this amount in the computation of taxable income treating it as capital receipt. According AO, the assessee submitted before him that the financial assistance provided by the West Bengal State Govt. was for expansion which was capital receipt in nature in view of the decision taken by Hon'ble High Court of Calcutta in the case of CIT-Vs- Rasoi Limited. However, according to AO, in the case of Rasoi Ltd., subsidy had been received by the assessee under WBIS-Scheme 1994 whereas in the instance case, the subsidy was received by the assessee under the WBIS-2000. So according to AO, the facts of the two cases are different and the decision in the case of CIT-vs- Rasoi Limited was not applicable in the instance case. Further, the AO observed that in the A.Y, 2010-11 the assessee credited the amount of incentive in P/L account as "Other Income" treating it as revenue receipt but claimed deduction in computation of taxable income treating it as capital receipt. Whereas, in the A. Y. 2009-10 the assessee had received subsidy of Rs. 203.70 Lakh from WBIDC, credited it in P/L account but did not claim deduction for subsidy as revenue in nature and credited it in P/L account. Only difference was that in the revised return of A. Y. 2010-11 assessee claimed deduction for it in the computation of taxable income. So according to AO, there was no deviation in treatment of nature of incentive in A. Y. 2010-11, as the both the years incentive was received from WBIDC under the same scheme. According to AO, it was verified from the website of WBIDC that the assessee received incentive from WBIDC under the category of Mega Projects of WBIS 2000 for the F.Y 2007-08, 2008-09, 2009-10 & 2010-11. The AO took note that assessee had credited in P&L account only of Rs. 233.52 Lakh from WBIDC on 22.09.2009 under WBIS 2000, out of which sum of Rs. 39.35 Lakh was given under SCIS (State Capital Investment Scheme) and remaining Rs. 196.77 was given as IPA (Industrial Promotion Assistance). So according to him, only the

amount of Rs. 39.35 Lakh can be treated as capital subsidy as it was specifically given for capital investment and remaining Rs. 196.77 Lakh was given for Industrial Promotion Assistance and it need to be treated as revenue receipt and hence added back to the total income of the assessee. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who deleted the addition as made by AO by holding that the Industrial Promotion Assistance received by the assessee is to be treated as a capital receipt. Aggrieved, revenue has preferred this appeal before us.

4. We have heard both the parties and perused the records. We note that the assessee company received Industrial Promotion Assistance (IPA) amounting to Rs. 2,33,51,560/- from the Govt. of West Bengal under West Bengal Incentive Scheme 2000(WBIS-2000). In the assessment order passed pursuant to the interference by the Id. PCIT, the AO noted after verification from the website of West Bengal Industrial Development Corporation (WBIDC) that the assessee received the incentive from WBIDC (West Bengal Industrial Development Corporation Ltd) under the category of Mega Projects of WBIS-2000 for the F.Ys 2007-08, 2008-09, 2009-10 & 2010-11. The AO noted that the assessee has credited in its P & L account only Rs. 233.52 Lakhs from WBIDC on 22-09-2009 under WBIS-2000, out of which sum of Rs. 39.35 Lakhs was given under SCIS (State Capital Investment Scheme) and remaining Rs. 196.77 Lakhs was given as IPA (Industrial Promotion Assistance). Thus, according to the AO only amount of Rs. 39.35 lakhs can be treated as capital subsidy as it was specifically given for capital investment and remaining Rs. 196.77 lakhs was revenue receipt. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who was pleased to allow the claim of the assessee by treating the remaining amount of Rs. 1,96,77,000/- as capital receipt and directed deletion of addition made by the AO to the tune of Rs. 1,96,77,000/-. Aggrieved by the action of the Id. CIT(A), the Revenue preferred this appeal.

5. The learned JCIT/ Sr. Departmental Representative (in short, the Id. Sr. DR) contended that the Id. CIT(A) erred in relying on the decision of the Hon'ble High Court of Calcutta in the case of CIT –Vs.- Rasoi Limited reported in 335 ITR 428 (Cal.) According to the Id. Sr. DR in that case (Rasoi Limited) the assessee had received subsidy on account of West Bengal Industrial Scheme 1994 (WBIS-1994). Whereas in the present case the

assessee received subsidy on the basis of West Bengal Incentive Scheme 2000 (WBIS-2000). According to the Id. Sr. DR the assessee itself treated the amount of subsidy as revenue receipt (IPA) by crediting the amount of incentive in the P & L account. However, only for the purpose of tax claim, it is claimed as capital receipt and therefore, according to him, the subsidy received by the assessee has to be treated as Revenue receipt and, therefore, the decision of the Id. CIT(A) need to be reversed and the AO's order to be restored.

6. Per Contra, the learned AR of the assessee has relied upon the decision of the Id. CIT(A) and also relied on the tribunal's decisions (i) in the cases of DCIT vs. M/s. Shyam Steel Industries Ltd. (ITA No. 602/Kol/2014)dt. 03.02.2017 for the AY 2010-11, (ii) DCIT vs. M/s. Budge Budge Refineries Ltd.. (ITA No. 1552/Kol/2010)dt.14.10.2016for the AY 2007-08 (iii) DCIT vs. M/s. Birla Corporation Ltd. (ITA Nos. 971/Kol/2012& 298/Kol/2013) dt. 25.08.2017 for the AYs 2008-09& 2009-10. According to the Id. AR, in all these three (3) cases the issue as to whether the subsidy is Capital Revenue pertained to West Bengal Incentive Scheme 2000 (WBIS-2000) and, since, the assessee also received subsidy from very the same West Bengal Incentive Scheme 2000, therefore, the tribunal's view that the subsidy is in the nature of capital is binding on this tribunal. According to him, the learned CIT(A) has relied on these orders for allowing the appeal of assessee by treating the amount of Rs. 1,96,77,000/- as capital receipt in nature. Therefore, he does not want us to interfere with the impugned order of the learned CIT(A).

7. After hearing both the parties and after carefully going through the records, we note that the assessee company had received an amount of Rs. 1,96,77,000/- from Govt. of West Bengal under the West Bengal Incentive Scheme 2000 (WBIS-2000) for establishing industry in the state of West Bengal particularly in Bankura District. The State Government has approved a package of Incentive for the assessee (M/s. Sova Ispat Ltd.) vide letter no. PPI/MP/0761/2003-14/2000(12) dt. 24.09.2003 issued by the Managing Director, WBIDC approving the following package:

“The State Government has approved the following package for SovaIspat Ltd, bankura. The unit is proposed to be set up with an investment of Rs. 279 crore for the purpose of setting up of a unit for manufacturing of Sponge Iron, Rolled Products, Ferro Alloys etc in West Bengal.

Package:

a) Industrial Promotion Assistance equivalent to upto @75% of the Sales tax paid in previous year on sales of financial goods subject to a maximum of 100% of the fixed capital investment for a maximum period of 15 years. Such assistance will be adjusted against current liabilities;

b) Capital investment subsidy @ 25% of the fixed capital investment subject to a maximum of Rs. 2.5 crore.

c) All other incentives under WBIS 2000 except interest subsidy in lieu of which IPAs being given. "

Further, the modalities of payment with regards to benefit as detailed above are also part the letter as mention above (copy enclosed).

8. Before going further, we would like to have looked at the relevant scheme of West Bengal Incentive Scheme, 2000, which are reproduced hereunder:-

Short Title: The Scheme may be called The West Bengal Incentive Scheme, 2000 (hereinafter referred as the 2000 Scheme) for Industrial Projects of large, medium and small scale units (hereinafter referred to as Units) to be set up in the State.

Eligible Unit: "Eligible Unit" means a unit in the large/medium/small scale sector having registration certificate issued by the Directorate of Industries and eligibility certificate by the W.B.I.D. C. or registration certificate issued by the District Industries Centre, as the case may be;

New Unit: "New Unit" means an industrial unit in the large/medium/small scale sector having investment in fixed capital assets which is established and commissioned by the entrepreneur for the manufacture of goods in West Ben al or the first time after the 1st January, 2000 and is registered with the Directorate of Cottage mall Scale Industries/ Directorate of Tourism £is the case may be;

Classification of developed areas and backward areas:

For the purpose of determination of types and quantum of incentive available under this Scheme for the approved projects, according to their location, the state shall be classifiedin the following groups:-

Group A - Calcutta Municipal Corporation

Group B - Howrah, Hooghly, North 24-Paraganas, South 24-Paragnas, Burdwan, Nadia &Midnapore districts.

Group C - Murshidabad, Birbhum, Purulia, Bankura, Malda, Cooch Behar, North

Dinajpur, South Dinojpur.jalpaiguri and Darjeeling districts. "

9. From a perusal of the aforesaid relevant provision it is understood that the above scheme has been launched by the Government of West Bengal to promote the entrepreneurs for setting up new industrial project/unit of large, medium and small scale in the State of

West Bengal. The meaning of unit as per the definition given in the scheme is that a unit in the large/medium/small scale sector having registration certificate issued by the Directorate of Industries and Eligibility Certificate by the **W.B.I.D.C.L (West Bengal Industrial Development Corporation Ltd.** In the case of assessee, the assessee has set up a new unit in the Bankura District of West Bengal area marked as Group 'C' in the scheme (supra). The assessee has been classified as a Mega Project. Mega Project is referred in clause 18 (page 13) of West Bengal Incentive Scheme, 2000, which reads as under:-

“18. Mega Projects:

Notwithstanding anything contained anywhere in the scheme the State Govt. may consider granting special package of incentive under this scheme to a Mega Project having due regard to the characteristics of the project, case by case basis, in the following areas:

- i) Size of investment
- ii) Special nature of the industry
- iii) Employment potentiality,
- iv) Down-stream effect of the industry,
- v) Ancillarisation effect of the industry,
- vi) Export Potentiality"

Further, the term "Mega Unit" as been defined in clause 3 (xiii) on page 2 of the West Bengal Incentive Scheme, 2000 is reproduced as under:

"Mega Unit" means an eligible unit of special characteristics set up on or after the 1st January, 2000 with investment exceeding Rs. 250.00crores/Rs. 25 croresw.e.f01.07.2001, (vide notification No. 538-CI/H dt. 14.08.2001)"

10. Since the assessee falls under the definition (supra), it qualified as a Mega Unit Project under the West Bengal Incentive Scheme 2000. Since the project of the assessee was a mega project and the assessee fulfilled the condition laid down in the scheme of WBIS-2000 (West Bengal Incentive Scheme, 2000) issued by the Department of Commerce & Industries, Government of West Bengal, the Government approved Industrial Promotion Assistance (IPA) to the assessee @ 75% of sales tax/VAT paid on sale of finished goods subject to maximum 100 for a maximum period of 15 years. According to the assessee whatever sales tax collected by it is first deposited to the concerned department and later only the assessee becomes entitled for the subsidy as Industrial Promotion Assistance. According to the assessee, it has been granted assistance (IPA) in the form of sales tax subsidy was on capital account and the AO ought not to have treated it as Revenue receipt. We note that the Id. CIT(A) while adjudicating the appeal of the assessee has relied upon the

decisions of the Tribunal in DCIT Vs. M/s. Shyam Steel Industries Ltd. (supra), DCIT Vs. M/s. Budge Budge Refineries Ltd (supra) and DCIT Vs. M/s. Birla Corporation Ltd (supra) and decided the case in favour of the assessee. Since in the aforesaid cases (supra) the Tribunal has upheld the respective assessee's claim that the subsidy it received from the Govt. of W.B under the West Bengal Incentive Scheme 2000 (WBIS-2000) was of capital nature. We note that the Tribunal in the case of Birla Corporation Ltd had adjudicated similar issue, wherein also the assessee in that case claimed the Industrial Promotion Assistance (IPA) it had received IPA from West Bengal Incentive Scheme 2000 which it claimed as capital in nature. The Tribunal while adjudicating this issue upheld the assessee's claim by holding as under:-

“4. Taxability of Industrial Promotion Assistance

Ground Nos. 4 & 5 of Revenue Appeal for Asst Year 2008-09

Ground No. 5 of Assessee Appeal for Asst Year 2008-09

Ground No. 3 of Revenue Appeal for Asst Year 2009-10

Ground No. 5 of Assessee Appeal for Asst Year 2009-10

The facts of Asst Year 2008-09 are taken up for adjudication and the decision rendered thereon would apply with equal force to Asst Year 2009-10 also except with variance in figures.

The brief facts of this issue is that the Id AO observed that assessee had received Industrial Promotion Assistance provided to one of its unit at Durgapur under West Bengal Incentive Scheme, 2000 to the tune of Rs 2,55,27,120/- which was claimed by it as a capital receipt by way of a separate letter dated 8.12.2010 during assessment proceedings. It was submitted that the 2000 Scheme was formulated by the West Bengal State Government for the promotion of industry in the State. It was applicable in respect of units to be set up and also to expansion projects of existing units having investment in fixed assets. Industrial projects in the large and medium sectors were eligible for the incentives under the scheme provided such projects were covered by a detailed feasibility report/project report and the project had been approved and sanctioned by the financial institutions/banks. It was found that the subsidy was in the form of relaxation of the tax was more for encouragement to entrepreneurs to establish/ expand industrial unit in the state of West Bengal rather than towards acquisition of specific capital assets in that industrial unit. The intention was with the object of supplementing trade receipt and profits of the assessee company rather than to assist the assessee in acquiring a capital asset, accordingly, it was incidental to carrying on the business of the assessee. Moreover, the subsidy in question has been granted to the assessee only after commencement of production and subsidy granted after commencement of production is operation subsidy which is of revenue nature. The assessee's claim for treating the subsidy in the nature of capital receipt is therefore not accepted. Further, any claim not made through I.T. Return or Revised Return, same is not allowable by AO. The Hon'ble Supreme Court in case of Goetze (India) Ltd. in 284 ITR 323, confirmed this decision.

Therefore, fresh claim of reducing the amount in computation furnished with return is not accepted .

4.1. The assessee explained before the Id CITA as below:-

"5.1 The next ground raises the contention that industrial promotion assistance of Rs.4,01,64,232/- received from the West Bengal State Government is a capital receipt and cannot be subjected to tax. The said amount was received by the assessee in terms of the West Bengal Incentive Scheme, 2000 (hereinafter referred to as "the 2000 Scheme ") (Page73 of the paper book) for expansion undertaken at the assessee's Durgapur Cement Works involving an investment of RS.100 crores.

5.2 The Assessing Officer has erroneously mentioned the figure of assistance as Rs.2,55,27,1201- which is actually the amount of assistance pertaining to the preceding year. The correct amount of assistance for the assessment year 2008- 09 is as mentioned in paragraph 5.1 hereinabove. The findings of the Assessing Officer for treating the amount of assistance as a revenue receipt are the same as those in respect of interest subsidy. Additionally, the Assessing Officer has observed that since the amount was not claimed in the return but by a letter in course of the assessment proceedings, in view of the judgment of the Hon 'ble Supreme Court in Goetze (India) Ltd. v CIT, (2006) 284 ITR 323 (SC), the claim cannot be allowed.

5.3 It is submitted that the decision of the Hon 'ble Supreme Court in Goetze (India) 's case (supra) has no application in the facts and circumstances of the instant case. In that case, the assessee sought to make a claim for deduction by a letter without revising the return. It is submitted that the instant case is not one of any claim for deduction. The assessee's contention is that industrial promotion assistance of Rs.4, 01,64,232/- is a capital receipt and cannot form part of the taxable income. It is settled law that the subject cannot be taxed unless the charging provision clearly imposes the obligation. Even if an assessee includes a capital receipt in his return, that would not preclude him from claiming that such receipt is not taxable. There cannot be any estoppel against the statute. If in law an item is not taxable, no amount of admission or misapprehension can make it taxable. It is always open to an assessee to take the plea that the figure though shown in the return is not taxable in law. Such taxability cannot be decided on the basis of any admission. Reliance in this behalf is placed on the decisions of the Hon 'ble Supreme Court in CIT v Ajax Products Ltd., (1965) 55 ITR 741 (SC) and those of the Hon 'ble Calcutta High Court in CIT v BhaskarMitter, (1974) 73 Taxman 437 (Cal) and MaynakPoddar (HUF) v WTO, (2003) 262 ITR 633 (Cal). The same view has also been taken by the Hon 'ble Tribunal in the assessee's own case for the assessment year 2006-07.

5.4 The 2000 Scheme was formulated by the West Bengal State Government for the promotion of industry in the State. The 2000 Scheme was for industries in large, medium, small scale and tourism sectors. The 2000 Scheme provided for special package of benefits for Mega Projects having a minimum investment of Rs.25 crores. Districts in the State were put under different groups. Group A comprised area falling under Calcutta Municipal Corporation and no incentive was available for any industry located in Group A.

5.5 The 2000 Scheme was applicable in respect of units to be set up and also to expansion projects of existing units having investment in fixed asset. Commercial production in the new unit or the expanded portion of an existing unit was required to commence on or after January 1, 2000. In case of expansion, the fixed capital investment made had to result in increase of the total value of the fixed capital investment by not less than 25% of the net value of fixed assets (land, building and plant and machinery) as on January 1, 2000 or Rs.50 lakhs, whichever was less. Industrial projects in the large and medium sectors were eligible for the incentives under the scheme provided such projects were covered by a detailed feasibility report/project report and the project had been approved and sanctioned by the financial institutions/banks. If the finance for the project was to come from the entrepreneur's own resources, the West Bengal Industrial Development Corporation Ltd. (hereinafter referred to as "WBIDC") had to be satisfied about the arrangement of such finance. Clause 18 of the 2000 Scheme dealt with Mega Projects and provided that the State Government would consider granting special package of incentives to a Mega Project having regard to the characteristics of the project on a case by case basis in the following areas:-

- (i) size of investment;
- (ii) special nature of industry;
- (iii) employment potentiality;
- (iv) down-stream effect of industry;
- (v) ancillarisation effect of the industry;
- (vi) export potentiality.

5.6 The assessee's unit fell under Group B, its expansion project qualified as a Mega Project and it was eligible for the incentives under the 2000 Scheme. The expansion undertaken by the assessee involved increase in manufacturing capacity of cement from 0.6 million tonnes per annum to 1.6 million tonnes per annum and was practically a new unit. The assessee was duly registered under the 2000 Scheme with the Directorate of Industries, West Bengal. In the registration certificate dated April 29, 2005, it was stipulated that the assessee would be eligible for industrial promotion assistance only after the total investment crossed the limit of Rs.25 crores and on starting commercial production.

5.7 WBIDC issued an eligibility certificate dated August 30, 2005 to the assessee for incentives under the 2000 Scheme as a Mega Project. The said certificate recorded the fact that the assessee had made arrangements for financing the project satisfactory to WBIDC. The said certificate was valid for a period of two years from the date of issue. If effective steps for establishment of the project were not taken within the said period, the validity period of the certificate was not to be extended unless an order was passed in that behalf after considering the merits of the case and subject to other condition stipulated in the 2000 Scheme and the order of extension. It was stipulated in the eligibility certificate that during the validity period thereof, the unit shall furnish to the Directorate of Industries, West Bengal and WBIDC the following information :-

- (a) Date of taking effective step;
- (b) Quarterly progress report on the implementation of the project, physical target achieved and new fixed capital investment made;
- (c) Date of commencement of power supply for production purposes;

- (d) Date of starting commercial production/operation;
- (e) Total number and date of appointment of new/additional factory workers in the unit;
- (f) Yearly report on the working and performance of the unit;

5.8 One of the conditions stipulated in the said eligibility certificate was that a true account of the value of fixed assets acquired, sold or otherwise disposed of had to be kept . Conditions (III) and (IV) of the eligibility certificate:

(III) If the Industrial unit for which this eligibility certificate is issued without obtaining prior written permission from the State Government or its authorised agent at least sixty day prior to the event;

- (a) discontinues taking effective steps for establishing the manufacturing unit;
- (b) stops production within year of commencement of production/operation;
- (c) permanently closes the unit within a period of five years of commencement of production/operation;
- (d) sell or otherwise disposes off wholly or in part or leases out wholly or in part or an change in the ownership of the fixed assets is effected;
- (e) closes or shifts the unit to a new location, and/or
- (j) changes its name and/or its constitution;

The amount of interest-free loans and other charges (if any) outstanding on the date of occurrence of such event and other benefit/benefits allowed under the 2000 Scheme shall be immediately recoverable from the unit.

IV) In case of failure of payment of any amount of installment of loans sanctioned and disbursed under the 2000 Scheme by due date, the entire loan or the balance of the entire loan, shall be deemed to be due on the date of default and action may be taken for recovery thereof at once. "

5.9 The amount of industrial promotion assistance to which the assessee was entitled was quantified at 75% of the sales tax paid in the preceding year and the amount of assistance was to be adjusted against the sales tax liability of the year of claim. The period for which such assistance was available was twelve years if commercial production commenced within June 30, 2005 and ten years if commercial production commenced between July 1, 2005 to December 31, 2005. The assessee commenced commercial production in December, 2005 and as such was entitled to the assistance for 10 years. It is submitted that it is evident from the provisions of the 2000 scheme and the registration and eligibility certificate granted to the assessee that the object for which the assistance was granted was clearly to enable the setting up of a new unit or expansion of an existing unit and the assistance was on capital account. The assistance was granted because of capital investment in establishing new units or expanding existing units Projects with investment of Rs. 25 crore and above were classified as mega projects. The unit could not be disposed of or closed and had to remain in production for the specified period. In case of default, the benefit allowed under the 2000 scheme was to become immediately recoverable. If loans were not repaid by due date, the entire loan/balance loan was to become due on the date of default and action for recovery could be taken immediately. Measurement of the amount of assistance with reference to the sales tax paid and payment of the assistance by way of adjustment against the sales tax liability

merely relate to the form or mechanism through which the assistance is granted and do not determine the character of the subsidy. The amount of sales tax paid is only the measure for determining the quantum of assistance. It is not a case of relaxation of tax or supplementing of trade receipt/profits as erroneously held by the Assessing Officer. Further, the time of payment of the assistance is also of no relevance. It is submitted that the treatment of the assistance as a revenue receipt by the Assessing Officer is contrary to the law laid down by the Hon'ble Supreme Court and the Hon'ble High Courts including the jurisdictional High Court".

4.2. The Id CITA by following the tribunal order in assessee's own case for the Asst Year 2006-07 held that the ground of appeal on the claim of Industrial Promotion Assistance (IPA) of the assessee being filed first time is accepted. He also accepted the plea of the assessee that the IPA would tantamount to capital receipt as the same was granted for expansion of an existing unit under the West Bengal Incentive Scheme 2000 by placing reliance on the decision of the Hon'ble Calcutta High Court in the case of CIT vs Rasoil Ltd reported in (2011) 335 ITR 438 (Cal) . However, he further held that the said IPA would go to reduce the cost of assets in terms of Explanation 10 to Section 43(1) of the Act and depreciation to be claimed on the reduced cost of assets thereon. Aggrieved, both the assessee as well as the revenue are in appeal before us.

4.3. We have heard the rival submissions and perused the materials available on record including the paper book containing the entire West Bengal Incentive Scheme 2000 and eligibility certificate issued by the competent authority approving the expansion of existing unit thereby approving the fact of assessee falling under the category of 'Mega Unit' under the said scheme. We find that Subsidy could be reduced from the cost only if it is found that the cost for acquiring the asset was directly or indirectly met out of the subsidy. In order to apply the proviso, it is necessary to show that the subsidy had been directly or indirectly used to acquire the asset though it may not be possible to exactly quantify the amount directly or indirectly used for acquiring the asset. For the purpose of applying the proviso, also it has to be found that the asset was acquired by directly or indirectly using the subsidy. It is apparent from the provisions of the 2000 Scheme and the certificate of registration and eligibility certificate that the assistance was to be made available after the commencement of commercial production without any financial cap and was to be adjusted against the sales tax liability of the year of claim. The industrial promotion assistance was clearly not used directly or indirectly to acquire the assets nor any part of the cost of the assets was met directly or indirectly from the industrial promotion assistance. We find that the issue under dispute is squarely covered by the decision of this tribunal in assessee's own case for Asst Year 2007-08 in ITA No. 683 & 581 /Kol/2011 dated 8.12.2014 wherein the grounds raised by the assessee as well as by the revenue were as under:-

Assessee Ground No. 1

That on the facts and circumstances of the case, the learned CIT(Appeals) though holding that sales-tax incentive of Rs 1238000 allowed by the State Govt. is the nature of capital receipt but erred in directing the Assessing Officer (AO) for reducing the same from the cost of Fixed Assets for the purpose of computing depreciation by applying the Explanation 10 to Sec. 43(1) of I. T. Act.

Revenue Ground No. 1

That Ld.CIT(A)-VI Kolkata has erred in law as well as on facts by deleting the addition made by the AO on account of Sales Tax Subsidy received by the assessee as revenue income of Rs 12,38,000/-.

The decision rendered thereon by this tribunal is as under:-

7. We have heard rival contentions on this issue and gone through the facts and circumstances of the case. We find that the facts are discussed in detail and which are undisputed. It is admitted that the assessee's issue of Sales Tax Incentive is capital in nature for the reason that the very scheme under which the expansion of the unit and subsidy under Rajasthan Sales Tax Scheme, 1998 was received explains the purpose of the scheme as incurring capital expenditure for installation of plant and machinery and for eligible for fixed capital investment. Even the issue of assessee is covered in its favour by Tribunal's decision in assessee's own case all along from A Ys 2002-03 to 2006-07. It is not brought to our notice by the Revenue that the matter has been decided by Hon'ble Calcutta High Court, despite a query from the Bench, In such circumstances, and taking a consistent view, we hold that the CIT(A) has rightly treated the sales tax subsidy receipt as 'capital in nature' .

8. In respect to the issue of application of Explanation-10 to Sec.43(1) of the Act we find from the facts of the case that the Rajasthan Govt. has framed a incentive scheme i.e., R.S.T/C.S.T. Exemptions Scheme 1998 for encouragement of setting up of industrial project or expansion of existing industrial projects. It is also a fact that the maximum limit of the subsidy was restricted with reference to the value of fixed capital investment in land, building, plant & machinery but no part of the subsidiary was specifically intended to subsidize the cost of the any fixed assets, therefore, it cannot be said that subsidy was to meet a portion of cost of asset. According to us, assessee has rightly not reduced the amount of subsidy received from the actual cost/WDV of the fixed assets while claiming depreciation. It is also a fact that revenue during scrutiny assessments of the assessee for AY s 2002-03 to 2006-07 added the subsidy amount as revenue receipt but Tribunal has considered the receipt as 'capital', accepting the contention of the assessee. Even Hon'ble Supreme Court in the case of PJ. Chemicals. Ltd. (supra) has considered this issue and held that where Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the actual cost. Therefore, the said amount of subsidy cannot be deducted from the actual cost under sec. 43(1) for the purpose allowing depreciation. It is further held that if Government subsidy is an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified as a percentage of such cost, it does not partake the character of payment intended either directly or indirectly to meet the "actual cost". By implication, the above judgment also provides that if the subsidy is intended for meeting a portion of the cost of the assets, then such subsidy should be deducted from the actual cost, for the purpose of computing depreciation. As per Hon'ble Supreme Court, law is that if the subsidy is asset-specific, such subsidy goes to reduce the actual cost. If the subsidy is to encourage setting up of the industry, it does not go to reduce the actual cost, even though the amount of subsidy was quantified on the basis of the

percentage of the total investment made by the assessee. The law is already settled on the subject. Now, the only wavering is with reference to Explanation 10 provided under sec.43(1) of the Act. The said Explanation provides 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. It is further, provided thereunder, that where such subsidy or grant or reimbursement 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. In order to invoke Explanation 10, it is necessary to show that the subsidy was directly or indirectly used for acquiring an asset. This is again a question of fact. The relatable subsidy to such asset can be reduced from the cost only if it is found that the cost for acquiring that asset was directly or indirectly met out of the subsidy. Likewise in the proviso, it is necessary to show that the subsidy has been directly or indirectly used to acquire an asset but it is not possible to exactly quantify the amount directly or indirectly used for acquiring the asset. Here also, a finding of fact is necessary that an asset was acquired by directly or indirectly using the subsidy. The above Explanation and the proviso thereto do not dilute the finding of the Hon'ble Supreme Court in the case of P. J. Chemicals Ltd.(supra) that asset-wise subsidy alone can be reduced from the actual cost. The above Explanation and the proviso therein to explain the law. They are not bringing any new law different from the law considered by Hon'ble Supreme Court in the above cases.

9. In view of the above facts and circumstances of the case and legal position explained by Hon'ble Supreme Court in the case of P.J. Chemicals Ltd. (supra), we are of the view that subsidy receipt should not be reduced from the actual cost of fixed assets for computing depreciation under the provisions of the Act. Accordingly, this issue of revenue's appeal is dismissed and that of the assessee is allowed".

Respectfully following the aforesaid decision of this tribunal supra , we hold that the IPA received by the assessee would have to be construed as a Capital Receipt and the same need not be reduced from the cost of assets in terms of Explanation 10 to Section 43(1) of the Act. Accordingly, the grounds raised by the revenue are dismissed and grounds raised by the assessee are allowed.

11. We note that similar issue came up before this Tribunal in the cases of M/s. Shyam Steel Industries Ltd (supra), M/s. Budge Budge Refineries Ltd (supra), wherein also the issue was the same in nature and the tribunal was adjudicating the issue as to whether the assessee received IPA (Industrial Promotion Assistance) from the West Bengal Government pursuant to the West Bengal Industrial Promotion Assistance Scheme 2000 received IPA (Industrial Promotion Assistance) from West Bengal Incentive Scheme 2000 is a capital

nature or not and the Tribunal after analyzing the scheme 2000 held as capital in nature. Therefore, we respectfully decides to follow the orders of the Tribunal in the aforesaid cases as well as keeping the ratio decidendi of the Hon'ble Calcutta High Court in the case of Rasoi Limited (supra), though it pertained to the West Bengal Industrial Promotion Scheme 1994 (WBIPS-1994).

12. We note that the Govt. of West Bengal has decided to grant the subsidy by way of IPA for setting up of large/medium/small scale eligible unit which is prescribed in the WBIS 2000 and the unit has to be set up in either group B or C areas prescribed in the said scheme (WBIS 2000). We note that the assessee had set up a new unit in the Bankura District of West Bengal area which falls in the group C area of the Scheme WBIS 2000. The competent authority of the State Government has approved the package of incentive for the assessee vide letter dated 24.09.2003 (supra) for setting up of the unit for manufacturing of sponge iron, Rolled Products, Ferro Alloys etc. in the state of West Bengal at Bankura District to set up the unit with an investment of Rs.279 cr. Thus, we note that the subsidy/financial assistance was for promotion of the industry and for setting up of large/medium/small scale eligible unit in the places prescribed at group B and C in the scheme WBIS 2000. Since the assessee fulfills the eligibility conditions prescribed by the Scheme 2000 it was entitled to industrial Promotion Assistance equivalent up to @75% of the sales tax paid in previous year which sales of finished goods subject to a maximum of 100% of the fixed capital investment for a maximum period of 15 years. Accordingly, the assessee in the year under consideration has received an amount of Rs.1,96,77,000/- from the West Bengal under the WBIS 200 scheme. Since the object of the financial assistance as per the subsidy scheme was to be enable the assessee to set up a new unit in the areas as specified group B or C as the WBIS 2000, we are of the opinion that the subsidy was on capital account. The AO erred in relying on the decision of the Hon'ble supreme Court in Sahaney Steel (supra) wherein the facts were different and distinguishable. In that case (Sahaney Steel) the Tribunal had disallowed the claim of the assessee and the Hon'ble Supreme court in Sahaney Steel's case after analysis of the scheme therein held that the subsidy given was on revenue account because it was given by way of assistance in carrying on of trade or business. On the facts of that case, it was held that the subsidy given

was to meet recurring expenses and it was not for acquiring the capital asset or bringing into existence any new asset and consequently the contention raised on behalf of the assessee on the facts of that case stood rejected and it was held that the subsidy received by Sahaney Steel could not be regarded as anything but a revenue receipt and the Apex Court was pleased to confirm the Tribunal's action. However, the case in hand before us is different as discussed above. The object of the subsidy in this case in was for setting up of unit in group B or C areas as spelled out in the WBIS scheme 2000 and since the object of the assistance under the subsidy scheme was to enable the assessee to set up unit, the receipt of subsidy was on capital account. We note that the Hon'ble Supreme Court in the subsequent decision after considering the Sahaney Steel & Press Works Pvt. Ltd. (Supra) in the case of CIT Vs. Pony Sugars & Chemicals Ltd. (supra) has made it clear that for determining the nature of the incentive/ subsidy, the object for which the subsidy/assistance given will be the deciding factor and the form or the method of the payment through which the subsidy is given is irrelevant. Merely because the amount of subsidy was equivalent to 75% of the sales tax paid by the beneficiary does not imply that the same was in the form of refund of sales tax paid. Therefore, since the subsidy was for setting up of large/medium/small scale eligible unit in group B and C areas in the State of West Bengal and the competent authority has issued the eligibility certificate (West Bengal Industrial Development Corporation Ltd.) to the assessee and since the assessee fulfills all the conditions as laid in the WBIS 2000 scheme, the industrial promotion assistance it received was on capital account.

13. In the light of the discussion above and relying on the ratio laid in the decision of the Hon'ble Calcutta High Court in M/s. Rasoi Ltd. (2011) 79 CCH 419, we uphold the order of the Id. CIT(A) since the subsidy/IPA was given to the assessee for setting up of mega project/unit in the district of Bankura, West Bengal (as discussed supra). Therefore, we find no infirmity in the impugned order of the Id. CIT(A). We uphold the same.

14. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai

Tribunal in the case of DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14th May, 2020. In the light of the above discussion, the appeal of revenue is dismissed.

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

Order is pronounced in the open court on 29th May, 2020.

Sd/-
(P. M. Jagtap)
Vice President

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated :29th May, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –DCIT, circle-3(1), Kolkata.
2. Respondent –M/s. Sova Ispat Limited, EN-32, Shyam Towers, Sector-V, Salt Lake City, Kolkata-700 091.
3. CIT(A)-17, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar

ITAT, Kolkata.