



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA No. 488/CTK/2017**  
Assessment Year: 2013-14

Raykal Aluminum Co. Pvt Ltd., Plot No.559, Annapurna Complex, Lewis Road, Bhubaneswar.	Vs.	DCIT, Corporate Circle -1(2), Bhubaneswar.
PAN/GIR No.AACCR 7792 k		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.K.Mishra, AR  
Revenue by : Shri Subhendu Dutta, DR

**Date of Hearing : 16 /07/ 2020**  
**Date of Pronouncement : 30/07/2020**

**ORDER**

**Per C.M.Garg,JM**

This is an appeal filed by the assessee against the order of the CIT(A),1, Bhubaneswar dated 25.8.2017 for the assessment year 2013-14.

2. The assessee has raised following grounds of appeal:

"1. On the facts and in law, Id CIT(A) erred in not adjudicating on the ground that the appellant has not commenced commercial operations. The Id CIT(A) failed to appreciate that the entire income and expenses for the year under consideration should be treated as capital in nature.

2. Without prejudice to the ground No.1, on the facts and in the circumstances of the case and in law, the Id CIT(A) erred in confirming the disallowance of Rs.1,33,97,073/- received by the appellant from Dubai Almn. Company Ltd., towards advance against

equity by treating the same as revenue in nature, only on the ground that the appellant has credited the same to P&L account."

3. Facts in brief of the case are like this. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has shown total income of Rs.1,33,97,073/- after adding back the pre-operative expenses of Rs.4,88,603/-. Against the total income arrived at, the assessee has reduced the same amount i.e. Rs.1,33,97,073/- treating the same as "capital receipt writes back of advance against equity" and declared total income at Rs. Nil. The AO also noticed from the notes forming part of the accounts-Schedule H, Point 2, that during the previous year, Dubal Aluminium Company Limited (DUBAL) had sold its 20% stake in the company to Vedanta Almn Limited and had taken a decision not to recover the same from the company and the company had sought permission from Reserve bank of India for retaining the monies received from DUBAL. The permission from RBI was received in the current year and, accordingly, the monies received from DUBAL of Rs.1,33,97,073/- as advance against equity have been written back to statement of profit and loss as an extraordinary item for the year 2012-13. It was in this backdrop that the Assessing Officer required the assessee to furnish the details for advance against equity commitment and also to provide a copy of the JV termination letter of M/s. DUBAL and also a copy of the approval accorded by Reserve bank of India to which, the assessee furnished the above

details. The AO also required the assessee to substantiate their claim, which was also furnished by the assessee. After considering the above submissions, the AO observed that the amount of Rs.,1,33,97,073/- furnished by DUBAL to the assessee, which was to be converted into equity shares upon occurrence of the financial closure of the project for which the sum was funded, has been written off by DUBAL as recoverable from the assessee. The assessee company has written back to statement of profit and loss account the monies received from DUBAL. Thus, the AO opined that the amount written back to the statement of profit and loss account of the assessee company is the amount funded additionally by DUBAL and same is to be converted into equity shares and same is revenue receipt. Hence, the contention of the assessee that the amount is capital receipt has not been found acceptable to the AO. Accordingly, the amount of Rs.1,33,97,073/- was treated as revenue receipt and brought the same to tax by the AO, which was upheld in first appeal.

4. At the time of hearing, Id counsel for the assessee submitted that the Assessing Officer was not correct and justified in making addition by observing that the amount has been written back to profit and loss account by the assessee company is only a revenue receipt and the assessee's obligation to repayment the amount to the assessee, which had funded its project has also ceased. Id counsel submitted that the contention of the assessee that the impugned amount is a capital receipt was quite

sustainable and tenable on the facts and circumstances of the case, for which the amount was given to the assessee company. Ld counsel vehemently pointed out that the AO did not appreciate the fact in a right perspective at the time of making addition and the Id CIT(A) was also not justified in confirming the same.

5. Drawing our attention towards the submissions of the assessee, as reproduced by the AO in para 4.2.6 of the assessment order, vide dated 19.1.2016, Id counsel submitted that there should be consistency in law and department's stand should not be changed to disallow the expenses being capital in nature disregarding the allowance of capital receipts. Ld counsel also drew our attention towards submissions of the assessee filed before the CIT(A), as reproduced in para 3 of the first appellate order, and submitted that the authorities below were not correct in holding the impugned amount as revenue receipt as the same was advanced by DUBAL as capital receipt and, therefore, same cannot be taxed as revenue receipt. Ld counsel submitted that the impugned addition made may kindly be deleted by allowing the appeal of the assessee.

6. Ld counsel of the assessee has placed reliance on the judgment of Hon'ble Bombay High Court in the case of Pr. CIT vs SAICOM Ltd., in Income tax Appeal No.1692 of 2017 dated 21.1.2020 and submitted that section 41(1) does not apply since waiver of loan does not amount to cessation of trading liability and when the assessee has not claimed any

deduction u/s.36(1)(iii) of the Act, qua the payment of interest in any previous year.

7. Ld counsel has also placed on the order of the Mumbai ITAT "J" Bench in the case of JSW Steel Ltd vs ACIT order dated 13.1.2017 in ITA No.923/Bang/2009 for assessment year 2004-05 and ors.

8. Replying to above, Id DR, first of all, submitted that the case laws relied upon by Id counsel for the assessee has no application to the facts and circumstances of the present case as the facts are not similar and synonymous to the case in hand. Ld DR vehemently submitted that the authorities below have considered the entire facts and circumstances of the case, for which the amount as received by the assessee from DUBAL and thereafter it was held that the impugned amount is taxable as revenue receipts in the hands of the assessee. Ld DR drew our attention to para 4 of the CIT(A) order and submitted that from the copy of the letter received by the revenue authorities from DUBAL, it was observed that the impugned advance amount was by the assessee company primarily for serving social needs around the project site and carrying out certain technical studies and the advance amount was spent by the assessee on revenue expenses. Ld DR further submitted that the assessee itself credited the amount of advance in its profit and loss account as income and in the computation of income, this amount was deducted from the total income to avoid tax payment. Ld DR also pointed out that when the payer i.e. DUBAL decided

to exit from the joint venture agreement before completion of the specific project and informed the assessee company that the amount provided in advance has been written off by DUBAL, and same should not be recovered from the assessee company, then it is ample clear that initially amount was received as revenue receipt and same was expended by the assessee as revenue expenditure and the amount was written off by the payer DUBAL in its profit and loss account without expecting the assessee company to refund the same or issue of shares or settle the account in any manner.

9. We have heard the rival submissions and perused the record of the case, inter alia, paper book filed by the assessee. We observe that during assessment proceedings, the assessee vide letter dated 19.1.2016 submitted the following explanations before the AO:

*" As per the terms of the Joint Venture Agreement, DUBAL had provided certain funding to the company for settling initial pre financial closure expenses and feasibility report related expenses for which they remitted Rs. 1,33,97,000/- over a period of time. These remittances were to be converted to equity upon achieving financial closure for the project. The same has been appearing in our Balance Sheet under the "Shareholder's Fund".*

*We also wish to state that we had submitted that the company has not started its commercial operation during A/Y 2012-13 and hence all the expenses were suo-moto disallowed for being capital in nature. Department has assessed us for A/Y 2012-13 and certified the same vide assessment order u/s.143(3) of the Income Tax Act, 1961.*

*The stand remains the same this year as we are still in pre-operational stage, Hence, for the same reasons, we have suo-moto disallowed the expenses and allowed the receipts as a nature corollary. Your goodself will appreciate that there should be consistency in law and Department's stand should not be changed to disallow the expenses being capital in nature disregarding the allowance of capital receipts. Therefore, we wish to state that it is crystal clear that capital receipt and capital expenses are not*

*chargeable to tax. In this connection, the Supreme Court in the case of OT vs. Karnal Cooperative Sugar Mills Ltd. [243 ITR 2], CIT vs. M/s. Pormi Sugars and Chemicals Ltd (306 ITR 392) and CIT vs Maheswari Devi Jute Mills Ltd. (57 ITR 36) has held that capital receipts are not liable to tax under the Income tax Act, 1961."*

10. The Assessing Officer dismissed the contention of the assessee by observing as under:

" 5.2 From the above stated facts, it is clear that the amount of Rs.1,33,97,073 funded by M/s. DUBAL to the assessee company, which was to be converted into equity shares upon occurrence of the financial closure of the project for which the sum was funded, has been written off by M/s. DUBAL as recoverable from the assessee company. As stated at para 5.1 (vi) above, the assessee company has written back to statement of profit and loss account the monies received from DUBAL. Thus, the amount written back to the profit and loss account of the assessee company is the amount funded additionally by M/s. DUBAL and that the same is to be converted into equity shares upon occurrence of the financial closure of the project. Therefore, the amount that has been written back to the profit and loss account by the assessee company is only a revenue receipt and the assessee's obligation to repay the amount to the company which had funded its project has also ceased. The contention of the assessee that the above sum of Rs.1,33,97,073 is a capital receipt is not tenable on the facts obtained. Hence the sum of Rs.1,33,97,073 is treated as revenue receipt and accordingly brought to tax."

11. From the relevant operating para 4 of the impugned order, we observe that the Id CIT(A) confirmed the addition with the following observations:

"4, I have considered the matter carefully, The contention of the assessee is that the impugned advance written off by the advancing company M/s, DUBAL is a capital receipt and, therefore, cannot be taxed as revenue receipt, I am not in a position to agree with the assessee in this regard, The amount in question was advanced by M/s, DUBAL by virtue of a joint venture agreement with the assessee company and the assessee was free to utilize the amount in any manner till the financial closure of the project, Only after the closure of the project, the advance was to be converted into equity shares. However, M/s. DUBAL decided to exit from the Joint venture agreement before completion of the specified project and wrote to the

assessee company that the amount of funds provided in advance had been written off by M/s, DUBAL and the same would not be recovered from the assessee company. From the copy of the letter from M/s, DUBAL it is seen that the impugned advance was used by the assessee company primarily for serving social needs around the project site and carrying out certain technical studies. In other words, the advance amount was spent by the assessee company on revenue expenses. Moreover, the assessee company itself credited this amount of advance in its P&L account as Income. It is only in the computation of income that this amount was deducted from the total Income. It is not understood how an item treated as income in the P&L account prepared as per the Companies Act would become a capital receipt for the purpose of Income Tax Act. In the written submission filed by the assessee reference has been made to certain case laws. It is found that these decisions are not applicable to the case of the assessee having been rendered on different sets of facts. Taking into account all the relevant facts, I find myself completely in agreement with the AO that the impugned amount of Rs.1,33,97,073/- is taxable as revenue receipts in the hands of the assessee. Accordingly, the addition of Rs. 1,33,97,073/- made in the assessment is confirmed."

12. On careful consideration of the rival submissions and vigilant perusal of the paper book of the assessee, first of all, we observe some glaring facts regarding receipt of impugned amount by the assessee from DUBAL and we find it profitable to mention the same as follows:

" a) As per joint venture agreement dated 17.9.2015 between Larsen & Toubro Limited (L&T) and DUBAL, M/s. DUBAL acquired 20% equity stake in the assessee's company for jointly develop an integrated bauxite mine cum alumina refinery and aluminium smelter.

b) In addition to above 20% stake, M/s. DUBAL also advanced Rs.1,33,97,358.68 to the assessee company through foreign inward remittance from the period 5.1.2006 to 4.3.2010. As per letter issued by DUBAL to the assessee company vide dated 23.2.2012, this

funding under joint venture agreement was to be converted into equity shares at the financial closure of the project.

c) During financial period 2012-13 pertaining to assessment year 2013-14, DUBAL sold its 20% stake to VEDANTA and went out of said JV agreement.

d) After exiting from the JV agreement, M/s. DUBAL communicated the assessee company its decision to write off the said amount of Rs.1,33,97,358.68 to make appropriate adjustment in the books of account and also confirmed that DUBAL would not exercise any right on the aforesaid amount in any manner in future.

e) We also note that the assessee company had obtained permission from Reserve bank of India that the monies received from DUBAL amounting to Rs.1,33,97,358.68 as advance against equity had been written back to the statement of profit and loss account as an extraordinary item during financial year 2012-13 relevant to assessment year 2013-14.

13. The above facts have not been controverted by Id counsel for the assessee in any manner and the sole contention placed before us is that said amount was originally capital receipt and capital receipt cannot be treated as revenue receipt for imposition of tax liability in the hands of the assessee. However, from the above noted facts, it is clear that the impugned amount was received by the assessee company from DUBAL, which was to be converted into equity shares on the financial closure of the project. We also observe that DUBAL did not wait for the financial closure

of the project and the impugned amount has been written off by DUBAL as recoverable from the assessee company and consequently, the assessee has written back the said amount to the statement of profit and loss account.

14. We are in agreement with the contention of Id D.R. that from the letter dated 23.2.2012 of DUBAL, as reproduced by the AO in para 4.2.3 of the assessment order, which clearly reveals that the impugned amount was given by M/s. DUBAL and the same was used by the assessee primarily for serving social needs around the project site and carrying out certain technical studies. Thus, DUBAL extended the amount to the assessee company with the direction of specific utilisation and the assessee company was under obligation to follow such direction. From this, it is clearly gathered that initially the amount was given as revenue receipt with a condition that same may be converted into equity shares upon occurrence of financial closure of the project. But due to reason, best known to DUBAL and the assessee company, DUBAL took exist from the joint venture agreement and write off the said amount given to the assessee under joint venture agreement understanding. It is also not in dispute that as per Notes -H to financial account, extracted in para 4.2.2 of the assessment order, the assessee company had obtained permission from the Reserve bank of India and, accordingly, monies received from DUBAL as advance against equity had been written back to the statement of profit and loss

account as an extraordinary item for the year 2012-13. Therefore, at the time of receipt of money and at the time of written back the amount received from DUBAL, it was revenue receipt and it never took the character of capital receipt as DUBAL took exit from the joint venture agreement before financial closure of the project and DUBAL did not claim or exercise any right or privilege against the assessee company regarding impugned amount. In view of above, we are inclined to hold that the impugned amount written back to the statement of profit and loss account of the assessee is the amount funded additionally by DUBAL and same was never converted into equity shares upon occurrence of the financial closure of the project and thus, the impugned amount has been written back to the statement of profit and loss account by the assessee company is a revenue receipt and the liability against the assessee company stood ceased when the amount was written off by DUBAL without any claim in future. Therefore, we have no hesitation to hold that the addition made by the AO and confirmed by the Id CIT(A) is correct and sustainable.

15. Before we record our final findings and logical conclusion on the issue, we also feel it necessary and appropriate to consider the ratio of decisions relied upon by Id counsel for the assessee.

16. In the case of SICO Ltd, (supra), the issue before the Hon'ble High Court was whether addition under section 41(1) can be made in respect of waiver of loan by Maharashtra Government?. In that case the loan was

given to the SICO to give effect of the purchase in respect of plant, machinery and tooling equipment which are capital assets. The said purchase amount had not been debited to the trading account or to the profit or loss account in any of the assessment years. Here, Hon'ble High Court deem it proper to mention that there is difference between 'trading liability' and 'other liability'. Section 41(1) of the IT Act particularly deals with the remission of trading liability whereas in that case, waiver of loan amounts to cessation of liability other than trading liability. In the case before us, the amount was written off by DUBAL and same was written back by the assessee to the statement of profit and loss account as an extraordinary item. Hence, the decision of Hon'ble Bombay High Court has no application.

17. In the case of JSW Steel Limited (supra), the issue before the Tribunal was whether the Id CIT(A) erred in not reducing the net profit being waiver of dues while computing the book profits under section 115 JB, wherein, the Tribunal held that the capital surplus on account of waiver of dues neither is taxable nor can be included in computation of book profit u/s.115 JB. This decision has also no application in the case at hand having distinguishable facts and circumstances.

18. In view of above discussion, we are of the considered view that the appeal is devoid of merits and deserve to be dismissed. Accordingly, we dismiss the ground of appeal taken by the assessee.

19. In the result, appeal of the assessee is dismissed.

Order pronounced on 30 /07/2020.

Sd/-  
**(Laxmi Prasad Sahu)**  
**ACCOUNTANT MEMBER**

sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 30/7/2020  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Raykal Aluminium Co. Pvt Ltd.,  
Plot No.559, Annapurna Complex, Lewis Road,  
Bhubaneswar
2. The Respondent. DCIT, Corporate Circle -1(2),  
Bhubaneswar.
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT- 1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**