

**IN THE INCOME TAX APPELLATE TRIBUNAL VIRTUAL COURT
"G", BENCH MUMBAI**

**BEFORE SHRI C.N.PRASAD, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6197/Mum/2017
(Assessment Year :2012-13)**

**ITA No.6198/Mum/2017
(Assessment Year :2013-14)**

&

**ITA No.6199/Mum/2017
(Assessment Year :2014-15)**

Asst. Commissioner of Income Tax-11(1)(2), Mumbai, Room No.1, Gr. Floor, Aayakar Bhavan M.K. Marg, Mumbai – 400 020	Vs.	M/s. Sangam India Ltd., B-306-09, Dynasty Business Park, A.K.Road, J.B.Nagar, Andheri (East) Mumbai -400 059
PAN/GIR No. AACCS0486K		
(Appellant)	..	(Respondent)

Assessee by	Shri Dharmesh Shah
Revenue by	Shri V Vinodkumar
Date of Hearing	10/07/2020
Date of Pronouncement	07/09/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

These appeals in ITA Nos.6197/Mum/2019, 6198/Mum/2019 & 6199/Mum/2019 for A.Y.2012-13, 2013-14 & 2014-15 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-18, Mumbai in Appeal Nos.CIT(A)-18/IT-302/ACIT-11(1)(2)/14-15, CIT(A)-

18/IT-75/DCIT-11(1)(2)/17-18 dated 29/05/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 10/03/2015, 28/10/2016 respectively by the Id. Asst. Commissioner of Income Tax-11(1)(2) & Dy. Commissioner of Income Tax-11(1)(2), Mumbai (hereinafter referred to as Id. AO).

2. Both the parties submitted that the grounds raised by the revenue are exactly identical in all the three years in view of the identical facts. With the consent of both the parties A.Y.2012-13 is taken as a lead case and the decision rendered thereon would apply with equal force for A.Yrs. 2013-14 and 2014-15 also except with variance in figures. The only effective issue on merits to be decided is as to whether the subsidy received by the assessee is chargeable to tax in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee company is engaged in the business of manufacturing and trading in yarns, fabrics and textiles. The return of income for the A.Y.2012-13 was filed by the assessee on 27/09/2012 declaring total income of Rs.19.88 Crores and assessment was completed u/s.143(3) of the Act on 10/03/2015 determining total income at Rs.20.47 Crores wherein certain disallowances / additions made in the assessment. We find that assessee had received subsidies in various schemes of Central and State Governments as under:-

(a) 2.5% interest subsidy under the Rajasthan Government Promotion Scheme 2003 of Rajasthan in favour of company's Bhilwara Unit. During the year, the assessee received Rajasthan State Government subsidy of Rs.9.17 Crores.

- (b) Interest subsidy under Technology Upgradation Fund Scheme (TUF) by Ministry of Textiles, Government of India of Rs.20.14 Crores.

3.1. We find that these subsidies were originally offered to tax by the assessee as the revenue receipts in the return of income and assessment completed accordingly. During the course of first appellate proceedings before the Id. CIT(A), assessee raised an additional ground of appeal stating that these subsidies received from State and Central Government were not liable for taxation as they are to be construed as capital receipts. We find that the Id. CIT(A) admitted the additional ground raised by the assessee, in view of the fact that the subsidy scheme of State and Central Government were very much available in the public domain and does not constitute verification of any fresh facts. Moreover since the additional ground involves a legal issue and goes to the root of the matter, the same was admitted by the Id. CIT(A) and adjudicated in detail by him. The copy of the schemes of Technology Upgradation Fund and Rajasthan Government Promotion Scheme 2003, which are available in public domain were examined by the Id. CIT(A) as an authority having co-terminus powers with that of the Id. AO. We find that the Id. CIT(A) had observed under Rajasthan Government Promotion Scheme, the assessee had received incentive from Rajasthan Government and interest subsidy under TUF from Government of India to promote textile industry. It was also submitted before the Id. CIT(A) that this subsidy was erroneously offered to tax as revenue receipt in view of the fact that the subsidy had been netted off with interest and sales account and not disclosed separately in the financial statements. It was also brought to the notice of the Id. CIT(A) that the subsidy whether it is capital or revenue in nature would become taxable in terms of Section 2(24) (xviii) only from A.Y. 2016-17 onwards. Hence prior to that period, these subsidies would have

to be treated only as capital receipt and the mistake in offering to tax erroneously was a bonafide mistake. The assessee also placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Pruthvi Brokers and Shareholders reported in 349 ITR 336 (Bom) wherein it was categorically observed that when the assessee is otherwise entitled to a claim of deduction or had erroneously offered a particular receipt (which is not taxable) due to his ignorance or for some other reason and the same could not be revised by the assessee by way of filing revised return of income, but had raised the said claim before the appellate authority, the appellate authority is bound to look into the same and adjudicate the same. The Hon'ble Jurisdictional High Court also held that assessee cannot be burdened with the tax which he is otherwise not entitled to pay as per law. Considering these statements, we find that the Id. CIT(A) had admitted the additional ground filed by the assessee and the Id. CIT(A) had adjudicated the non-taxability of the receipt of subsidy after due examination of the relevant scheme which are available in the public domain. We find that the Id. CIT(A) had duly mentioned with regard to subsidy received of TUF of Rs.20.15 Crores as under:-

1. Subsidy received under TUFs of Rs.20.15crores:

"(a) The objective of subsidy by the Government under TUFs was to meet the challenges of post quota regime which requires industry to become more competitive, cost effective and quality oriented. With this background, Govt. of India launched a Technology Upgradation Fund Scheme (TUFs) for textile and jute industries w.e.f. 01/04/1999 for a period of 5 years i.e. upto 31/03/2004 which was subsequently extended upto 31/03/2007 and further extended from time to time.

(b) The TUF Scheme aims at meeting part of the capital investment of the eligible undertakings in modernizing the plant and machinery for existing units by way of contribution towards the total capital outlay on eligible assets for new units. The focus of such incentive was to induce the entrepreneur to undertake investment in modernizing plant and machinery and other assets for overall development of the industry. It was essential for the textile industry to have access to timely and adequate capital at - internationally

comparable rates of interests in order to upgrade its technology level. Due to this scheme substantial investment was made in country in the textile sector.

c) The incentive/subsidy under the TUF Scheme was provided with the basic intention of development / modernization of textile industry and to provide financial support for heavy capital outlay required in such modernizations by industries.

(d) W.e.f 01/01/2002 an option was provided to the eligible entrepreneurs avail the incentive either in the form of Credit Linked Capital Subsidy (CLCS) or by way of 5% interest reimbursement under Technology Upgradation Scheme. This according to the Appellant is Conclusive proof that the incentive under TUF scheme is a capital subsidy which may be availed either under the 12% CLCS scheme or as 5% interest reimbursement. The mode of disbursement shall not change the nature of an incentive from capital to revenue.

(e) The objective of the "The Technology Upgradation Fund Scheme (TUFS)" issued by the Ministry of Textiles, Govt. of India, it is seen that to improve the overall health of the textile industry which contributes significantly to the Indian economy and provides sizable employment opportunity it was decided to provide adequate capital to textile companies at internationally comparable rates so that major modernization programme through technology up gradation could be carried on by them. Hence the interest subsidy was not provided to the Appellant to carry out or support its day to day business operations but was for capital expenditure made in modernizing its existing plant & machinery through technology upgradation so that they could compete with global textile industries and contribute to the Indian economy

(f) The interest charged in respect of 'SBI Rupee Term Loan and other banks of appellants' for meeting the objectives of TUFS was given as incentive to the Appellant. According the said incentives was granted to encourage additional investment for expansion and modernization of the industrial undertaking, the same is in the nature of a capital receipt and is, not chargeable to tax under the provisions of Income Tax Act, 1961 (Act).

3.2. We find that the Id. CIT(A) with regard to non-taxability of incentive of Rs.9.17 Crores received under Rajasthan Investment Promotion Policy 2013 of Rajasthan Government as under:-

a) The nature of Incentive subsidy under the Rajasthan Investment Promotion Policy 2003 as one to encourage creation of new capacity by way . of setting up or expansion of industries in the backward areas of the state.

b) Interest/Wages subsidy under the Rajasthan Investment Promotion Policy 2003 was received for industries to be set up in group B and group C areas and not to industries in group A area which means subsidy is

basically granted for promotion of industries in backward area and not for running the industry.

(c) As scheme of Rajasthan Govt which provided that wages subsidy will be granted if the eligible industrial unit is able to 'generate direct employment of 10 or more -in case of a new unit and 25% additional direct employment subject to a minimum of ten persons in case of diversification, modernization or expansion, which clearly shows that the basic motive for giving the subsidy was promotion of industry for development of the backward region where there is scarcity of employment opportunity.

(d) It is pursuant to the aforesaid scheme, the appellant had received interest subsidy under TUF to the extent of 5% on the Term loan facility/working capital advanced by the banks/financial institutions. The amount of subsidy so received is also noticed to have been shown as part of interest income net off in "Interest paid account" in schedule 24 "Finance Cost" of the audited accounts. Further the interest and wages subsidy from Rajasthan Govt net off in Sale of product account as these subsidy given in the form of sales tax incentive and net off in sales in schedule 17 "Revenue from operation" of the audited accounts. These facts, clearly lead to the conclusion that the subsidy was granted for industrial development in the State of Rajasthan and for Textile industrialization and creating employment opportunities. Thus, applying the purpose test laid down by the Supreme Court, in the case of Ponni Sugars & Chemicals Ltd. Vs CIT 306 ITR 392 (S.C.), the subsidy received by the appellant is in the nature of capital receipt and not revenue receipt.

3.3. We find from the above that the Id. CIT(A) had categorically made it clear that the aforesaid subsidies were given to the assessee for promoting capacity expansion, globalization of textile trade and employment generation and would be squarely governed by the ratio decidendi laid down by the Hon'ble Supreme Court in the case of Ponni Sugars & Chemicals Ltd. vs. CIT reported in 306 ITR 392 and accordingly, held that the subsidies received by the assessee in the instant case would be capital receipts not chargeable to tax. We find that the Id. CIT(A) had also observed that by this treatment of subsidy as capital receipts, the assessed income would become below returned

income which is permissible as the legitimate claim of the assessee should not be denied and there is no estoppel against the statute.

3.4. We find that the Id. CIT(A) had duly examined the subsidy scheme of the Central and State Government and had reproduced the contents there on in his appellate order. From the perusal of the same, we find that the purpose of granting subsidy to the assessee in the instant case is for setting up of the industry in particular location. Hence, the 'purpose test' as contemplated by the Hon'ble Supreme Court in the case of *Ponni Sugars & Chemicals Ltd. vs. CIT* reported in 306 ITR 392 is fully satisfied by the assessee in the instant case and accordingly, the subsidies granted thereon had been rightly considered as capital receipts by the Id. CIT(A). We find that since this issue is a legal issue, the Id. CIT(A) had rightly admitted the additional ground of appeal raised before him and had adjudicated the same in detail. This is not the case of Id. CIT(A) merely accepting to the statements of the assessee without recording his independent findings in the appellate order.

3.5. On the contrary, we find that the Id. CIT(A) having co-terminus powers with that of the Assessing Officer had duly examined the entire scheme and brought out the final nuances of the schemes in his appellate order and examined all the contents of the scheme with the its purpose of granting. After due examination of the scheme in detail, we find that the

Id. CIT(A) had rightly treated the subsidy received by the assessee as capital receipt. Hence, we are not inclined to accept the ground of the revenue that there is violation of Rule 46A on the ground that assessee had filed additional evidence before the Id. CIT(A). It is not in dispute that the subsidy granted by the Central and State Government in the instant case are already in public domain and same cannot be construed as additional evidence filed by the assessee before the Id. CIT(A).

3.6. With regard to the other argument advanced by the Id. DR that if the subsidy is treated as receipt not chargeable to tax, then the assessed income would go below the returned income is concerned, we find that in the instant case, the subsidy received by the assessee has been erroneously offered to tax by the assessee alongwith filing the return of income. Moreover, the time limit available to the assessee u/s 139(5) of the Act for filing revised return had expired in the instant case. Till the completion of assessment, the assessee was not advised about the existing Hon'ble Supreme Court judgment in the case of Ponni Sugars & Chemicals Ltd. vs. CIT reported in 306 ITR 392. Later on when the assessee was made aware about the said Hon'ble Supreme Court judgment, during the pendency of the first appellate proceedings, the assessee thought to fit the raise the additional ground before the Id. CIT(A) and relief has been rightly granted by the Id. CIT(A) on merits. The legal principle to be understood here is that "there is no estoppel

against the statute". The entire scheme of taxation after determining the total income is governed by the provisions of the Income Tax Act which is to be read with Article 265 of the Constitution of India which stipulates that "no tax could be collected except by authority of law". Hence, it is a legal mandate and pre-requisite that a particular receipt need to be taxed within the ambit of the provisions of the Income Tax Act. The receipt does not become taxable, merely because it was erroneously offered to tax by the assessee in the return of income. The department is entitled to collect only legitimate tax that are due from the assessee. Reliance in this regard is placed on the decision of the Hon'ble Gujarat High Court in the case of Gujarat Gas Co. Ltd vs. JCIT reported in 245 ITR 84. We also find that in yet another decision, the Hon'ble Gujarat High Court in the case of CIT vs. Milton Laminates Ltd., reported in 218 Taxman 108(Guj) after considering the decision of the Hon'ble Supreme Court in the case of CIT vs. Shelly Products reported in 261 ITR 367 had held that assessed income could be below the returned income by observing as under:-

"7. In view of the above, we do not find any reason to interfere with the Tribunal's ultimate conclusion in allowing the assessee's appeal. Though some of the observations may not appeal to us, nevertheless, for the reasons somewhat different from those recorded by the Tribunal we come to the same conclusion. Decision of the Apex Court in case of Shelly Products & others(supra), was rendered in very different background. It was a case where the assessee had filed return. Assessee had paid self assessment tax on the income disclosed in the return. Tribunal on appeal by the assessee held that the order of assessment passed by the Assessing Officer was ab-initio void since he had no jurisdiction to deal with such proceedings. Revenue sought reference before the High Court. When such reference was pending, the assessee applied to the department for refund of the tax paid. It was in this background the Apex Court expressed the

opinion that liability to pay income tax does not depend on assessment being made and failure or inability to frame fresh assessment after earlier assessment is set aside or nullified in appropriate proceedings, does not disentitle the assessee to claim refund of the advance tax and tax paid on self assessment because to that extent the assessee has admitted his liability to pay tax in accordance with law. Facts of the present case are therefore, different. In case of hand, the assessment was not rendered null. In fact such assessment, which according to the order of CIT(Appeals) had become final tax liability of the assessee, came lower than that declared by him in the return filed.”

3.7. Respectfully following the aforesaid decision of the Hon'ble Gujarat High Court and in view of the aforesaid observations in the facts and circumstances of the instant case, we hold that CIT(A) was justified in holding that assessed income could go below the returned income.

3.8. In view of our aforesaid observations on merits and on technicalities and in view of the decision of the Hon'ble Supreme Court in the case of Ponni Sugars reported in 306 ITR 392, we do not find any infirmity in the entire order of the Id. CIT(A) granting relief to the assessee both on technicalities and on merits. Accordingly, the grounds raised by the revenue are dismissed.

4. In the result, appeals of the revenue are dismissed.

Order pronounced on 07/09/2020 by way of proper mentioning in the notice board

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 07/09/2020
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai