

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2218/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

Fortuna Engineering Pvt. Ltd.,
E-109, MIDC, Ambad,
Nashik – 422010

PAN : AAACF2767Q

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle – 1,
Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Devendra Jain
Revenue by : Shri Dhananjay Mahajan

सुनवाई की तारीख / Date of Hearing : 17-09-2020
घोषणा की तारीख / Date of Pronouncement : 28-09-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 13-07-2017 passed by the Commissioner of Income Tax (Appeals)-1, Nashik [‘CIT(A)'] for assessment year 2014-15.

2. The assessee raised ground Nos. 1 to 5 amongst which the only issue emanates questioning the action of CIT(A) in confirming the order of AO in

holding the subsidy on account of Octroi refund is revenue in nature in the facts and circumstances of the case.

3. The brief facts relating to the issue on hand are that the assessee is a company and is engaged in the business of manufacturing of connecting rods and automobile components. The assessee conducts its business under the name and style of "M/s. Fortuna Engineering Pvt. Ltd." The assessee received an amount of Rs.1,33,41,000/- as Octroi Duty refund and claimed the said subsidy granted by the Government of Maharashtra as per the scheme of PSI-2007 Scheme to set up plant or development of plant in backward areas. The AO treated the same as revenue in nature and added the same to the total income of assessee vide this order dated 03-11-2016 u/s. 143(3) of the Act. The CIT(A) confirmed the order of AO. Aggrieved by the order of CIT(A), the assessee is before us.

4. The ld. AR, Shri Devendra Jain contended that the subsidy granted by the Government of Maharashtra is in the nature of capital contribution to establish industrial unit in industrially backward areas. The Government of Maharashtra granted said subsidy is to encourage setting up/expansion of existing industries in the backward or developing regions. He argued that the assessee credited same to the Capital Reserve and shown the same in financial statements. The assessee started industrial units at various plants located in Ambad Industrial Area for which eligibility certificate has been granted for the period of 01-04-2011 to 31-03-2016. Further, the ld. AR referred to order dated 11-02-2020 in assessee's own case passed by this Tribunal in ITA No. 815/PUN/2018 and submitted that the Assessing Officer allowed the claim of assessee for A.Y. 2013-14 as subsidy received as capital in nature. Against which the

Pr. CIT u/s. 263 of the Act held the same as erroneous and prejudicial to the interest of revenue. This Tribunal quashed the order of Pr. CIT by holding the Octroi refund as claimed by the assessee as capital in nature is correct. Further, he referred to the decision of Hon'ble High Court of Bombay in the case of CIT Vs. Chaphalkar Brothers reported in 351 ITR 309 (Bom) and submitted that the Hon'ble High Court of Bombay held the form of subsidy is immaterial, the said subsidy is to be treated on capital account is the same is granted for setting up a new unit to expand the existing unit. He also referred to the decision of Hon'ble Supreme Court in the case of CIT Vs. Chaphalkar Brothers, Pune reported in 400 ITR 279 (SC) and submitted the Hon'ble Supreme Court upheld the decision of Hon'ble High Court of Bombay. He prayed to set aside the order of CIT(A) by holding the subsidy granted to the assessee is in the capital in nature.

5. The ld. DR, Shri Dhananjay Mahajan submitted by referring to para 5.10 of CIT(A), that the subsidy has been granted to the assessee for carrying on the business during the course of trading and the question of subsidy is to be treated as revenue in nature. He placed reliance on the order of CIT(A).

6. Heard both parties and perused the material available on record. We note that the assessee started industrial units in many locations in Ambad Industrial Area. The implementing agency for Octroi duty refund under Package Scheme of Incentives of Govt. of Maharashtra issued eligibility certificate dated 18-07-2012 for a period of 01-04-2011 to 31-03-2016. There is no dispute the said Package Scheme of Incentives introduced by the Govt. of Maharashtra only to encourage setting up/expansion of existing industries in the backward regions so as to ensure sustained

industrial growth and to promote employment for balanced regional development of the State. We also note that in assessee's own case for earlier year for A.Y. 2013-14 the AO allowed the claim of assessee in treating the subsidy granted in the form of Octroi refund as capital in nature u/s. 143(3) proceedings. The Pr. CIT exercising his jurisdiction u/s. 263 of the Act held the same as erroneous and prejudicial to the interest of revenue by holding the said Octroi refund subsidy is revenue in nature. As discussed above this Tribunal quashed the order passed u/s. 263 of the Act on the merits this Tribunal held Octroi refund is capital in nature not chargeable to tax vide para 4.2.

7. The Hon'ble High Court of Bombay in the case of Chaphalkar Brothers (supra) held that if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt should be treated as capital account. We note that the Hon'ble High Court of Bombay in order to reach said conclusion placed reliance on the decision of Hon'ble Supreme Court in the cases of Ponni Sugar & Chemicals Ltd., 306 ITR 392 and Sahney Steel & Press Works Ltd., 228 ITR 253. Having aggrieved before the Hon'ble High Court of Bombay the Department of Revenue carried the matter to the file of Hon'ble Supreme Court challenging the decision of Hon'ble High Court of Bombay in the case of Chaphalkar Brothers (supra). The Hon'ble Supreme Court dealt the issue in detail and held if the object of subsidy is to industrialize the State and to generate employment such incentive is to be treated as capital in nature. The relevant portion of which reproduced here-in-below for ready reference :

"22. Applying the aforesaid test contained in both Sahney Steel as well as Ponni Sugar, we are of the view that the object, as stated in the statement of objects and reasons, of the amendment ordinance was that since the average occupancy in cinema theatres has fallen considerably and hardly any new theatres have been started in the recent past, the concept of a Complete

Family Entertainment Centre, more popularly known as Multiplex Theatre Complex, has emerged. These complexes offer various entertainment facilities for the entire family as a whole. It was noticed that these complexes are highly capital intensive and their gestation period is quite long and therefore, they need Government support in the form of incentives qua entertainment duty. It was also added that government with a view to commemorate the birth centenary of late Shri V. Shantaram decided to grant concession in entertainment duty to Multiplex Theatre Complexes to promote construction of new cinema houses in the State. The aforesaid object is clear and unequivocal. The object of the grant of the subsidy was in order that persons come forward to construct Multiplex Theatre Complexes, the idea being that exemption from entertainment duty for a period of three years and partial remission for a period of two years should go towards helping the industry to set up such highly capital intensive entertainment centers. This being the case, it is difficult to accept Mr. Narasimha's argument that it is only the immediate object and not the larger object which must be kept in mind in that the subsidy scheme kicks in only post construction, that is when cinema tickets are actually sold. We hasten to add that the object of the scheme is only one -there is no larger or immediate object. That the object is carried out in a particular manner is irrelevant, as has been held in both Ponni Sugar and Sahney Steel.

23. *Mr. Ganesh, learned Senior Counsel, also sought to rely upon a judgment of the Jammu and Kashmir High Court in Shri Balaji Alloys vs. C.I.T. (2011) 333 I.T.R. 335. While considering the scheme of refund of excise duty and interest subsidy in that case, it was held that the scheme was capital in nature, despite the fact that the incentives were not available unless and until commercial production has started, and that the incentives in the form of excise duty or interest subsidy were not given to the assessee expressly for the purpose of purchasing capital assets or for the purpose of purchasing machinery.*

24. *After setting out both the Supreme Court judgments referred to hereinabove, the High Court found that the concessions were issued in order to achieve the twin objects of acceleration of industrial development in the State of Jammu and Kashmir and generation of employment in the said State. Thus considered, it was obvious that the incentives would have to be held capital and not revenue. Mr. Ganesh, learned Senior Counsel, pointed out that by an order dated 19.04.2016, this Court stated that the issue raised in those appeals was covered, inter alia, by the judgment in Ponni Sugars, and the appeals were, therefore, dismissed.*

25. *We have no hesitation in holding that the finding of the Jammu and Kashmir High Court on the facts of the incentive subsidy contained in that case is absolutely correct. In that once the object of the subsidy was to industrialize the State and to generate employment in the State, the fact that the subsidy took a particular form and the fact that it was granted only after commencement of production would make no difference.*

26. *In coming to the West Bengal cases, we find that the West Bengal Finance Act, 2003 which amended the Bengal Amusements Tax Act of 1922 also provided:*

The Bengal Amusements Tax Act, 1922.

The provision seeks to provide, in order to encourage development of multiplex theatre complex, a very modern and highly capital-intensive entertainment centre, financial assistance to the proprietors of such complex by allowing them to retain, by way of subsidy, the amount of entertainment tax collected against the value of ticket for admission to such multiplex theatre complex for a period not exceeding four years;

27. *Since the subsidy scheme in the West Bengal case is similar to the scheme in the Maharashtra case being to encourage development of Multiplex Theatre Complexes which are capital intensive in nature, and since the subsidy scheme in that case is also similar to the Maharashtra cases, in that the amount of entertainment tax collected was to be retained by the new Multiplex Theatre Complexes for a period not exceeding four years, we are of*

the view that West Bengal cases must follow the judgment that has been just delivered in the Maharashtra case.”

8. In the light of decision of Hon'ble Supreme Court in the case of Chaphlkar Brothers Pune (supra) we hold that the assessee is entitled to treat the Octroi refund as capital in nature and it is not chargeable to tax. Thus, the order of CIT(A) fails and it is set aside. Thus, ground Nos. 1 to 5 raised by the assessee are allowed.

9. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 28th September, 2020.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th September, 2020.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nashik
4. The Pr. CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune