

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “C” NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.A. No.7505/DEL/2017  
Assessment Year 2013-14

DCIT, Circle-12(1), New Delhi.	v.	Indocount Industries Ltd. 15/76, 2 <sup>nd</sup> Floor, Rajendra Nagar, New Delhi.
TAN/PAN: AAAC10866P (Appellant)		(Respondent)

Appellant by:	Ms. Sunita Singh, CIT-D.R.		
Respondent by:	None		
Date of hearing:	06	01	2021
Date of pronouncement:	06	01	2021

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the Revenue against the impugned order dated 31.10.2017 passed by Commissioner of Income Tax (Appeals)-IV, New Delhi for the quantum of assessment passed u/s. 143(3) for the Assessment Year 2013-14. In the grounds of appeal, the sole ground raised by the Revenue reads as under:

*“On the facts and circumstances of the case and in law, whether the ld. CIT(A) has erred in treating the subsidies given in the form of sales tax subsidy and refund of interest on term loan as capital asset.”*

2. The facts in brief are that the assessee-company is engaged in the business of manufacturing and exporting of cotton yarn. During the year, the assessee has received 'Industrial Promotion Subsidy' amounting to Rs.21,66,57,592/- from the Government of Maharashtra under the 'Package Scheme of Incentives, 2001' and another subsidy amounting to Rs.6,22,55,596/- from the Central Government as incentive in the form of reimbursement of interest under the 'Technology Up-gradation Fund Scheme'. These subsidies were claimed as 'capital receipts' not chargeable to tax. The ld. Assessing Officer following the earlier assessment order for the Assessment Year 2012-13 held that same is revenue receipt.

3. Ld. CIT (A) following the first appellate order for Assessment Year 2012-13 order dated 22.02.2016 held that CIT (A) in the earlier years after detailed discussion held that sales tax subsidy and refund of interest subsidy of term loan is to be treated as capital receipts.

4. None appeared on behalf of the assessee. However, ld. CIT-DR candidly admit that this issue stands covered in favour of the assessee by the decision of the Tribunal in assessee's own case for Assessment Year 2012-13 wherein Revenue's appeal has been dismissed.

5. On perusal of the record and the impugned order, it is seen that the Package Scheme of Incentives (PSI) introduced by the Government of Maharashtra was for the purpose of

encouraging entrepreneurs set up/expansion units in the developing region of the State. Further PSI was revised for intensifying and accelerating the process of dispersal of industries to the less developed areas of the State coupled with the objects of generating mass employment opportunities. The preamble of the Scheme as incorporated by the Id. CIT (A) along with relevant submissions are as under:

*The State Government had declared a new category of Mega Projects under the Package Scheme of Incentives (PSI) 2001 vide Govt. Resolution, I.E. & L.D., dated 2/6/2005 based on the level of Fixed Capital investment or employment generation. The State Govt, has also declared the Industrial, Investment and Infrastructure Policy, 2006 so as to ensure sustained industrial growth, further improve the conducive investment climate in the State, provide a global competitive edge to the State's industry and promote employment and balanced regional development. The Policy envisages grant of a customized package of incentives to Mega Projects. While the Package Scheme of Incentives 2007 declared subsequently outlines the eligibility criteria and monitoring mechanism for administering the incentives, the issue of putting in place a mechanism for sanction and disbursement of Industrial Promotional Subsidy (IPS) as part of the customized packages to Mega Projects under PSI2001 and 2007 was under consideration of the Government".*

*Clause 1.1 of the said notification (at page 111 of the APB) defines "Industrial Promotion Subsidy" in respect of Mega Projects under PSI 2001 & 2007 to mean an amount equivalent*

to the percentage of "Eligible Investments" which has been agreed to as a part of the customized package, or the amount of tax payable under MVAT, 2002 and CST Act, 1956 by the eligible Mega Projects in respect of sale of finished products etc., whichever is lower.

d. Recital 1 of the Memorandum of Understanding dated 26-09-2007 entered into by the appellant company with the Govt, of Maharashtra (copy placed at page 114 to 121 of the APB) also highlights the purpose for which the subsidy in question was given. It reads, to quote,(page 114 of the APB), "WHEREAS : 1. The GOVERNMENT has framed a policy for rapid industrialization of the Developing regions of the State of Maharashtra as a whole and for the purpose the GOVERNMENT has felt it necessary to reduce progressively disparities in the development between different regions of the State and to achieve the said object the GOVERNMENT has announced and referred various incentives under the Scheme of Incentives sanctioned under its Resolution No. 1021/(CR-73)/IND-8, dated 31-03- 2001 and vide G.R. No. IDL/1005/(C.R.119)IND-8 dated 02/06/2005 and Government Offer letter No. HPC-1107/C.R.202/lnd-8 dated 13/07/2007 (hereinafter referred to as "the 2001 Scheme") for encouraging entrepreneurs for setting up Mega Projects in the eligible area in the State of Maharashtra".

(e) As eloquently reflected by the "Eligibility Certificate" placed at page 102 to 109 of the APB, (kind attention is drawn to column 7 on page 103 of the APB), it was on account of a capital investment of Rs. 18531.53 crore made by the appellant company in the said mega project that it became eligible for

*grant of the "Industrial Promotion Subsidy" in question. This fact by itself is cogent enough to irrefutably establish that the subsidy so received is capital in nature not chargeable to tax.*

*(f) As demonstrated by the aforesaid documents, the primary purpose for which incentives were given by the Govt, of Maharashtra under the Mega Project Scheme covered by PSI, 2001 and 2007 was to reduce regional imbalance in the industrial growth of the State by inducing entrepreneurs to set up industrial units in less developed regions thereby generating mass employment opportunities in addition to achieving a balanced overall industrial and economic growth of the State. Setting up of industrial units in the backward areas being the purpose for which subsidy has been granted, it is submitted, the same is clearly "capital" in nature not chargeable to tax.*

*(g) In terms of the Circular No.142 dated 1<sup>st</sup> August, 1974 issued by the CBDT, any incentive received for helping growth of industries and not for supplementing profits is 'capital' in nature not chargeable to tax."*

6. Since the object of the subsidy was setting up of Industrial units in backward areas the same has been held to be capital in the earlier year by the Id. CIT (A) as well as by the Tribunal by following the principle laid down by the Hon'ble Supreme Court in the case of **Ponni Sugars and Chemicals Ltd., (2008) 306 ITR 392 (SC)**. Similarly, the relevant finding on the issue of interest subsidy on term loan for technical upgradation fund scheme by the Central Government, relevant observation of the Id. CIT (A) in the earlier year read as under:

*"As regards appellant's claim for subsidy received by the appellant from TUFs is concerned it is submitted that the home textile part of the said mega project was registered under the Technology Upgradation Fund (TUF) and a term loan of about Rs. 165 crores was taken by the appellant company from financial institutions/banks for making investment in plant and machinery. In terms of the TUF scheme, the appellant company is receiving incentive in the form of reimbursement on a quarterly basis of 5% of interest charged by the financial institutions/banks. Under the "Interest Subvention" scheme introduced by the RBI on the advice of the Ministry of Finance, an interest subvention of 2 percentage point per annum is provided by the Government.*

*Thus, applying the purpose test laid down by the Supreme Court in various decisions, particularly Sahney Steel (supra) and Ponni Sugars (supra), it can, in our opinion, be reasonably argued that the incentives given by the State Government under the PSI, 2001 & 2007 and under TUF Scheme are in the nature of capital receipt not liable to tax under the provisions of the Act. In view of the aforesaid, incentives received by the appellant in the form of reimbursement of sales tax and interest reimbursement would, be treated in the nature of a capital receipt and not liable to tax under the provisions of the Act.*

*I have gone through the contention of the appellant and find merit in its case, as has been elaborately discussed what is important to decide the case as to whether the subsidy is on capital field or revenue field is the purpose for which the subsidy is granted if the subsidy is granted for setting up of units in backward area or for that matter it is allowed on capital outlays the same is deemed to be capital receipt and if the same is granted for supporting trading*

*receipt the same is revenue in nature and that method and mode of payment is not the determinative factor to decide the same.*

*The jurisdictional ITAT Delhi has in case of Sutlej Textile and Industries Limited decided on 3rd July 2015 I.T.A. No. 5142/Del/2013 has agreed with the stand taken by CIT(A) and dismissed the department's appeal and held regarding 5% interest subsidy (TUFS) by Government of India, as under:-*

*"On perusal of the aforesaid, it is clear that the TUF scheme was introduced by the Government recognizing the potential of the textile industry and the larger benefits of technological upgradation in the textile industry, which was necessary to provide a fresh lease of life to the said industry. The Government recognized that technological upgradation in textile industry would result in capacity expansion and modernization, which would have direct impact on employment generation, exports and globalization of textile trade. In order achieve such objective, TUF scheme was introduced by the Government to provide interest subsidy on loan taken for technological up gradation by the units in the textile industry.*

*In terms of the said scheme, the appellant received interest subsidy of Rs.25,90,32,252 in respect of various units as per details placed at page 200 of the paper book. The interest subsidy so received was shown as net of interest on term loans paid by the appellant as is evident from Note No.18 given in schedule 22 of the Notes on Accounts forming part of the balance sheet of the appellant for the relevant assessment year.*

*The aforesaid facts, in my view, make it clear that subsidy under the TUF scheme was given for technological upgradation, in order to incentive-wise the textile industry and for promoting capacity expansion, globalization of textile trade and employment*

generation. Thus, applying the purpose test laid down in *Ponni Sugar*, such subsidy is held to be in the nature of capital receipt.

It is noticed that the aforesaid issue is also clearly covered by the *Punjab & Haryana High Court* in the case of *Shamlal Bansal* relied upon by the A/R of the appellant, a copy whereof has been placed ON RECORD. On perusal of the said decision, it is noticed that the *Punjab & Haryana High Court* held that subsidy received under the TUF scheme is in the nature of capital receipt."

Considering the facts of the case and also taking the cue from the decision of *ITAT Delhi* dated 03.07.2015 in case of *DCIT. Circle 9(1), New Delhi v/s Sutlej Textile and Industries (ITA No. 5142/Del/2013)* and *Punjab and Haryana High court* in case of *Shamlal Bansal (Supra)* I am of the considered view that the amount received as interest subsidy under TUF scheme is on capital field and not liable to tax."

7. Now that this issue has been decided by the Tribunal in ITA No. 2388/Del/2016 order dated 09.02.2018 wherein on similar issue the Revenue's appeal was dismissed. Therefore, respectfully following the same, the grounds raised by the Revenue is dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Above decision was announced on conclusion of Virtual Hearing in the presence of both the parties on 6<sup>th</sup> January, 2021.

Sd/-  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

DATED: 6<sup>th</sup> January, 2021

PKK:

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**