आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.:1271/CHNY/2018**

निर्धारण वर्ष / Assessment Year: 2008-09

The DCIT, Corporate Circle – 1(2), Chennai – 600 034.	v.	**M/s. Convenio Foods International Pvt. Ltd.,** No.123/1A1, Mambakkam Post, Chennai – 600 127. **PAN: AACCC 4346A**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. R. Anita, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri N. Quadir Hoseyn, Advocate

सुनवाई की तारीख/Date of Hearing : 06.07.2021

घोषणा की तारीख/Date of Pronouncement : 09.08.2021

आदेश /O R D E R

Per G Manjunatha, AM:

This appeal filed by the Revenue is directed against order of learned Commissioner of Income Tax (Appeals)-4, Chennai, dated 02.01.2018 and pertains to assessment year 2008-09.

2. The Revenue has raised the following grounds of appeal:-

"1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.

2.1 The learned CIT(A) erred in deleting the excess disallowance of depreciation claimed of Rs.1.47 lakhs.

2.2 The learned CIT(A) erred in holding that the subsidy in the form of grant in aid received by the assessee was not relatable to any specific asset/plant and machinery.

2.3 The learned CIT(A) failed to appreciate that the disallowance made by the AO invoking provisions of Sec.43(1) of the Act was required to be upheld in view of the fact that the grant in aid was tied to the purchase of assets required for setting up of a frozen veg / non veg food project as is evident from the terms and conditions mentioned in the annexure to the Sanction Letter.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

3. The brief facts of the case are that the assessee company is engaged in the business of food products, filed its return of income for the assessment year 2008-09 declaring loss of Rs.3,88,25,456/-. The case has been subsequently, reopened u/s.147 of the Income Tax Act, 1961 (hereinafter the 'Act') for the reasons recorded as per which income chargeable to tax had been escaped assessment on account of non-reduction of capital subsidy received from Government of India from the assets before claiming depreciation. Therefore, the AO issued notice u/s.148 of the Act and called upon the assessee to file return. In response, the assessee vide letter dated 04.04.2013 had stated that return of income already filed on 28.09.2008 may be treated as return of income filed in response to

notice u/s.148 of the Act. The case has been taken up for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has received a sum of Rs.50 lakhs as capital subsidy from Government of India through Ministry of Food Processing for setting up of food processing unit. The said subsidy has been granted to set-up new unit for the purpose of purchasing plant & machinery and construction of technical civil works related to the said project. Therefore, he called upon assessee to explain as to why capital subsidy shall not be deducted from cost of asset and rework depreciation. In response, the assessee submitted that since, subsidy is for acquisition of plant & machinery, it is in the nature of capital receipts which cannot be taxed and hence, the question of reduction of said subsidy from the value of plant & machinery as per the provisions of section 43(1) of the Act does not arise. The AO, however, was not convinced with the explanation furnished by the assessee and according to him, if any cost of asset has been met directly or indirectly by any other person or authority for the purpose of purchase of assets, then same needs to be reduced from the concerned cost of assets before claiming depreciation. Therefore, he has rejected explanation furnished by the assessee and reworked depreciation after reducing capital subsidy received from Government of India.

4. The assessee, being aggrieved by the assessment order preferred an appeal before the ld.CIT(A). Before the ld.CIT(A), the assessee has reiterated its submissions made before the AO and taken support from the decision of the Hon'ble Jurisdictional High Court of Madras in the case of M/s. Srinivas Industries vs. CIT, (1991) 188 ITR 22 and argued that amount of subsidy made available cannot be deducted from the cost of capital asset for purposes of working out depreciation u/s.43(1) of the Act. The CIT(A) after considering relevant submissions of the assessee and also taken support from the decision of Hon'ble High Court of Madras in the case of M/s. Srinivas Industries vs. CIT, *supra* and also decision of Hon'ble High Court of Rajasthan in the case of CIT vs. Ambica Electrolytic Capacitor *supra* held that subsidy or investment subsidy given by the Government which is for development of industries in the selected backward districts cannot be deducted from the actual cost for giving the benefit of depreciation. Aggrieved by the CIT(A), the Revenue is in appeal before us.

5. The ld.DR submitted that the ld.CIT(A) has erred in deleting the excess depreciation claim on assets without reducing capital subsidy received from Government of India for promotion and

setting up of industry without appreciating the fact that subsidy received by the assessee was not relatable to any specific asset / plant & machinery. The ld.DR further submitted that the ld.CIT(A) has failed to appreciate the findings of the AO invoking provisions of section 43(1) of the Act, before deleting excess depreciation in view of the fact that grant in aid was tied to the purchase of assets required for setting up of a frozen veg/non-veg food products as evident from the terms and conditions enclosed as annexure to the sanction letter.

6. The ld.AR on the other hand strongly supporting order of the ld.CIT(A) submitted that the ld.CIT(A) has rightly appreciated the facts in light of the decision of Hon'ble Jurisdictional High Court of Madras in the case of M/s. Srinivas Industries vs. CIT, *supra* and held that when capital subsidy was received for promotion of industries in backward areas, the sum partakes the nature of capital receipts which cannot be taxed under the Act and hence, the same need not to be deducted from the cost of asset as per provision of section 43(1) of the Act.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As per

the provisions of section 43(1) of the Act, any part of cost of asset was directly or indirectly met by any person or agency, then the same need to be deducted from the cost of concerned asset. The AO has reduced capital subsidy received from Government of India through Ministry of Food Processing from the cost of assets on the ground that said capital subsidy was in the nature of part of cost of the project directly or indirectly met by Government of India. It was the claim of the assessee that capital subsidy received from Government of India is in the nature of capital receipts which was given for promotion of industries in backward areas. We have gone through the reasons given by the AO in light of arguments of the assessee and find that there is no merit in the reasons given by the AO to consider capital subsidy as part of cost of asset directly / indirectly met by third party, because capital subsidy received from Government of India is for setting up of new food processing industry as per the scheme of promotion of industries in the industrially backward areas. Therefore, said subsidy partake the nature of capital contribution and hence the same is in the nature of capital receipt, which cannot be taxed under the Act. Once the amount is in the nature of capital receipt, question of reduction of said subsidy from the cost of plant & machinery as per the provisions of section 43(1) of the Act does not arise. This

proposition was supported by the decision of the Hon'ble Jurisdictional High Court of Madras in the case of M/s. Srinivas Industries vs. CIT, *supra* where it was held that amount of subsidy made available cannot be deducted from the cost of capital asset for the purpose of working out depreciation u/s.43(1) of the Act. This proposition was further supported by the decision of the Hon'ble High Court of Rajasthan in the case of CIT vs. Ambica Electrolytic Capacitor, *supra.* We, therefore are of the considered view that the AO was erred in reducing capital subsidy received for setting up of new food processing industry from the plant & machinery for computing depreciation. The CIT(A) after considering relevant facts has rightly deleted addition made by the AO towards excess depreciation. Hence, we are inclined to uphold the findings of the ld.CIT(A) and dismiss the appeal filed by the Revenue.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the court on 9th August, 2021 at Chennai.

Sd/-	Sd/-
(महावीर सिंह)	(जी. मंजुनाथ)
(MAHAVIR SINGH)	**(G. MANJUNATHA)**
उपाध्यक्ष /VICE PRESIDENT	लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated, the 9th August, 2021
RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त /CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.