

THE INCOME TAX APPELLATE TRIBUNAL  
"G" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 4097/Mum/2017 (Assessment Year 2011-12)

I.T.A. No. 4098/Mum/2017 (Assessment Year 2012-13)

DCIT-8(2)(1) Room No. 624 Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020.	Vs.	M/s. Shree Vaishnav Casting Pvt. Ltd. 104, Plot No. 10 Shiv Ashish Complex 19 <sup>th</sup> Road, Near Malhar Hotel Mumbai-400 071.  PAN : AAKCS7987D
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri T.S. Khalsa
Date of Hearing	21.09.2021
Date of Pronouncement	06 .12.2021

O R D E R

Per Shamim Yahya (AM) :

These are appeals by the Revenue directed against the order of learned CIT(A) pertaining to A.Y. 2011-12 & 2012-13.

2. Since the grounds are identical in both the appeals we are referring to A.Y. 2011-12 as under :

(i) The Ld. CIT (A) has failed to appreciate the facts that the object of the subsidy (PSI 2007) is for the promotion as well as for smooth functioning of industries in backward areas of the state of Maharashtra & the sales Tax refund and other relief on various account like refund of electricity, Professional tax, stamp duty etc were given to the assessee to run the business more profitably and efficiently.

(ii) The Learned CIT (A) has failed to appreciate the fact that the assessee got subsidy only after paying the sales tax and not when the assessee had set up the new factory.

(iii) The Learned CIT (A) has failed to appreciate the fact that the quantum of subsidy is determined with reference to the sales tax paid and not with reference to the fixed capital.

2. The Ld. CIT(A)'s order is contrary to law and facts and deserves to be set aside and A.O.'s order may be restored.

3. Facts of the case are as under :

The assessee has received subsidy of Rs 6,43,82,059/- which was credited to Reserve A/c. As per para 4 of the assessment order the nature of subsidy is reimbursement of sales tax paid by the eligible unit. This subsidy was received as incentive under the Scheme PSI 2007 declared by the State Govt. of Maharashtra for setting up unit in the D Zone. The AO held that this receipt is a revenue receipt because it pertains to refund of sales tax paid which is related to carrying on the business. The appellant however, contended that the subsidy is given as industrial Promotion Subsidy. It is contended that the Govt. of Maharashtra since 1964 came out with schemes to promote industries in the backward areas of the state. Such schemes were modified from time to time with respect to incentive amount and number of workers to be employed and areas on the basis of their industrialization but the basic idea is to promote industrial and generation to employment. The assessee's scheme is covered under the Package Scheme of Incentive of 2007. The AO has discussed in detail in para 4,3 of the assessment order and has contended that in order to encourage dispersal of industries to the less developed areas of the state, Govt has been giving the package of incentives to new/expansion units set up in the developing region of the state since 1964 under the scheme known as Package Scheme of Incentives, The AO has discussed the features of the Scheme of 2007. It is contended therein that only for new projects, the quantum of subsidy will be linked to fixed capital investment. As mentioned by the AO in para 4.3 of the order, the business of the Assessee commenced from 8/11/2009 and the factory has been set up in backward area of Maharashtra D Zone. The AO thereafter in page 11 of the assessment order contends that such incentive include refund of sales tax, interest, exemption from payment of

electricity, waiver of stamp duty etc. He therefore contends that the subsidy is for promotion as well as smooth functioning of the industries in backward areas of the state of Maharashtra. He further contends that apart from sales tax refund, other incentives like refund of electricity, professional tax, stamp duty were given for running the business more profitably and efficiently and thus it cannot be said that subsidy was given for setting up of new factory. He further contends that though quantum of subsidy is determined with reference to capital, but subsidy was given with reference to sales tax paid by the assessee. Another point taken by the AO is that the judgement of Hon'ble Bombay High Court in the case of Reliance Industries Ltd, wherein sales tax subsidy received as per PSI 1993 Scheme was considered as capital receipt is not applicable as in that scheme, the Maharashtra Govt does not disperse any amount by way of subsidy but allows industrial undertaking to collect the sales tax and retain it as capital subsidy while in the present scheme the collected amount is required to be deposited with Sales Tax department which is thereafter reimbursed by the Ministry. The AO relied on the case of Sahney Steel & Press Works Ltd wherein sales tax relief electricity charges or water charges given after commencement of production were not treated as capital subsidies. The basic objections of the A.O are that;

(i) PSI 2007 has several types of incentives both promotional and financial i.e. refund on sales tax, interest, exemption from payment of electricity, waiver of stamp duty etc.

(ii) Thus the object of PSI 2007 is for promotion as well as smooth functioning Industries in backward areas of Maharashtra. The subsidy is not given for setting up the industry but running the business more profitably.

(iii) Though the quantum of subsidy is linked to capital but it is given w.r.t. sales tax paid by the assessee and not with reference to fixed capital and given after setting up of Industry and after starting payment of sales tax.

4. Upon assessee's appeal learned CIT(A) noted the submission of the assessee in which reliance was placed upon the decision in the case of Reliance Industries Ltd., wherein the assessee has received subsidy from Maharashtra Government in the form of exemption of sales tax as capital

receipt in the 1979 scheme. Learned CIT(A) noted the submission that the said decision of Reliance Industries Ltd. (supra) was applicable, hence learned CIT(A) decided the issue in favour of the assessee. Order of the learned CIT(A) in this regard can be gainfully referred as under :-

The appellant has mainly relied on the decision in the case of Reliance Industries Ltd A.Y 1986-87 wherein the appellant has claimed the subsidy received from Maharashtra Govt. in the form of exemption of sales tax as capital receipt in the 1979 scheme. It is but necessary to understand the facts in that case. In that case, Hon'ble Tribunal first referred the case of A.Y 1984-85 and in para 12 of the order has discussed the features of 1979 scheme of the Maharashtra Government. In that scheme, the incentives were in the form of outright refund, interest free unsecured loan repayable after 12 years, exemption from payment of sales tax. The quantum of incentive would be equal to sales tax liability, i.e the quantum of subsidy in each year is equal to the sales tax- liability of each year subject to maximum limit. In that year the Tribunal held that the intention of the state legislature was clear that the incentive was only in the capital field.

Hon'ble Tribunal thereafter referred to A.Y 1985-86 as discussed in para 14 onward of this on sale of finished products or purchase of raw material i.e related to production activity and further that the modification made in July 1982 w.r.t gross fixed capital investment is for monitoring of the scheme .The appellant however submitted that if the refund of sales tax is given on purchase of machinery or raw material to acquire new plant or to expansion in backward area then the entire subsidy will be capital receipt as per decision rendered in the case of Sahney steel. The Revenue raised various arguments including

- (i) the finding of earlier tribunal that sales tax incentive was in the nature of capital receipt was incorrect and no longer tenable in view of the judgement of Supreme Court in Sahney Steel and press works Ltd. It was contended by the department that in this case the contention of assessee that subsidy was of capital nature as the same had been given for the purpose of stimulating the setting up and expansion of Industries in the state was not accepted because it was only when the assessee had set up the industry and commenced production that the various incentives were given for a limited period of 5 years. It was contended that the subsidy granted to the assessee in the present case was similarly for production and any subsidy related to production could not be anything but revenue receipt.
- (ii) The 1969, 1973 and 1976 scheme were all production based incentives and similarly the 1979 scheme under which the assessee received the subsidy related to sales tax or purchase tax that would have been payable on the sale of finished products or purchase of raw materials and thus the exemption was related to assessee's production activity that the modification made in July 82 to the scheme with reference to

fixed capital investment was only for the purpose of monitoring but the essential condition relating to production continued and therefore the assessee's case fell within the ratio laid down by the Supreme Court in *Sahney Steel and Press Works Ltd.*

The assessee on the contrary submitted that the incentive scheme right from 1964 were geared to the following objectives

- (i) Development of the backward regions of the state of Maharashtra
- (ii) Dispersal of Industries
- (iii) Promotion of the Industries for employment oriented units
- (iv) Providing local employment to scheduled caste/tribes

The Hon'ble Tribunal in para 17, discussed the conclusion drawn by the Hon'ble Tribunal in A.Y 1985-86. It was held in para 17(2) & (3) of the order as under:-

- "(2) The assessee's case fell under the principle of the decision of the House of Lords in *Seaham Harbour Dock Co.* (supra) and not under the principle of *Pontypridd & Rhondda* (supra). These decisions have been discussed in great detail in paras 76 to 85 of the order. These broad principles have been culled out from these judgements and they are:
- (a) It is the purpose for which the subsidy or incentive is given that would define the character of receipt in the hands of the recipient;
  - (b) The mere mode of payment would not alter the character of the sums received; and
  - (c) It would be quite irrelevant whether the money, when received, was applied for capital purposes or for revenue purposes, in the absence of any special allocation in the grant itself.
- (3) In *Sahney Steel* (supra), both the House of Lord's decisions were referred to and it was held that the ultimate decision would depend upon the salient features of the Scheme. If it is given as a general assistance to the assessee to carry on his business or trade, it would be a trading receipt, but if the object of the subsidy, irrespective of its source, is to enable the assessee to acquire new plant and machinery for further expansion of its manufacturing capacity in a backward area, the entire subsidy must be held to be a capital receipt and it will not be open to the Revenue to contend that the subsidy paid in the form of refund of sales tax paid on raw materials or finished products must be treated as revenue receipt. However, if the monies are given to the assessee for assisting him in the carrying out of the business operations and it is given only after and conditional upon the commencement of production, they must be treated as revenue receipt."

Hon'ble Tribunal further discussed the schemes as appearing in para 17(5) of the order and also found that the Maharashtra Govt Scheme unlike the

Andhra Pradesh or Madhya Pradesh scheme was completely focused on the location of industrial and the amount fixed capital investment and that these twin objectives were sought to be achieved by an elaborate scheme of incentives with a view to allure prospective investors to make large scale fixed capital investment in the interior backward areas of the state and therefore it was fixed capital investment with direct nexus between the incentive and the fixed capital investment. The investor did not have to wait to set up the industry first, commence production and complete a year of accounting and he could enter into negotiation with the government at blue print stage only and gradually increase his level of entitlement after setting up the industry. Thus the Maharashtra scheme was is considered as fixed capital incentive whereas the Andhra scheme was operational subsidy there was direct nexus between the fixed capital and the incentive

For the A.Y 1986-87, discussions appear in para 18 onward. In para 22, the Tribunal again noted that that Maharashtra Govt. Scheme aimed to disperse the industries outside the Mumbai Thane Pune belt to hasten the pace of all industries in the developing regions of the State and no incentive was available for the industries in the developed areas of the state whereas in the Andhra scheme, the object was to stimulate rapid industrialization throughout the state. Further in the Andhra scheme, sales tax incentive quantum was uniform to all eligible units whereas in the Maharashtra scheme, quantum was location specific. Thirdly, in Andhra scheme, incentive was in the form of refund of sales tax subject to maximum of equity capital while in Maharashtra scheme it was either in form of sales tax exemption or interest free unsecured loan subject to monetary ceiling. Further in Maharashtra scheme, period of entitlement depended upon unit being new or existing and directly connected to gross capital investment while in Andhra scheme the period of entitlement was fixed for 5 years. Lastly, in Maharashtra scheme an intending entrepreneur could apply for incentive immediately after taking up the effective step and letter of entitlement from CST could however be granted only after commencement of production.

Thereafter in para 23, the Hon'ble Bench held that the Maharashtra Govt Scheme was completely focused on the location of Industry and the amount of fixed capital investment. Thereafter on careful consideration of all the aspects, the Hon'ble Tribunal held that the Hon'ble Tribunal in the case of Reliance Industries Ltd had correctly interpreted which understood the ratio of judgement of Supreme Court in the case of Sahney Steel & Press Works Ltd.

4.2 The appellant has also relied on the decision in the case of Maharashtra Oil Extraction Pvt. Ltd. Vs. DCIT ITA No. 8255/Mum/2010 dated 28.3.2014 for A.Y. 2005-06. In this case, the decision of Reliance Industries was followed and appeal allowed. It is held that:-

"Thus in view of the primacy of the purpose of the scheme over the source of the same the alleged sales tax incentive of Rs 1,27,95,137/- is not an operational subsidy. Further, it is a settled law at the level of aforesaid apex court judgement that the purpose for which the subsidy is

granted assumes primacy over the source of the grant and if the purpose is to help to set up its business or complete a project, such monies must be treated as to have been received for capital purpose."

4.2 Coming to the case of the assessee, the first objection of the AO is that PSI 1993 Scheme was different. However, the AO has not brought on record as to how the Scheme is different. The AO himself says that the Scheme in which the appellant is covered i.e. PSI 2007 Scheme, both the promotional and financial incentive are given as elaborated in 4.3 and 5 of the assessment order. The quantum of subsidy is linked to fixed capital investment. The investment is location specific i.e. for less developed areas of the state. In the case of Reliance Industries Ltd, the Hon'ble Tribunal held that it does not matter as to how the mode of payment has been made and the focus was on the fixed capital investment in the 1993 Scheme . Thus looking into the entirety of the facts of the case, the objections raised by the AO are not sustainable as *pari materia*, there does not appear to be any difference in the substance of the schemes. The nature of subsidy is only reimbursement of sales tax. This scheme is also location specific (being linked to backward area to be an eligible unit) and linked to the fixed capital investment. The only difference is reimbursement of the sales tax but mode of payment does not alter the character of the project as held in the case of Reliance Industries Ltd. Looking into the facts of the case, therefore I am of the opinion that the objections of the A.O cannot be accepted."

5. Against the above order revenue is in appeal before ITAT
  
6. We have heard learned Departmental Representative and perused the record. We note that learned CIT(A) has given a finding that the issue is covered in favour of the assessee by the decision of Hon'ble Bombay High Court in the case of Reliance Industries Ltd. (supra). Learned CIT(A) has also given a finding that there is no difference between the scheme which was considered in that decision and the scheme under which the assessee is claiming exemption in the present case. Learned Departmental Representative could not show any diversion in this regard. Hence, respectfully following the decision as above, we do not find any infirmity in the order of learned CIT(A). Accordingly, we uphold the same. Our above order applies *mutatis mutandis* to AY 2012-13.
  
7. In the result, these appeal by the Revenue stand dismissed.

Pronounced in the open court on 06.12.2021

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 06/12/2021

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS