

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ **ITA No.887/Chny/2019**  
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

<b>Smt. Sundara Varadhan Balamani</b> No.5, Nagareeswarar Koil Street, Kancheepuram-631 502.	<b>बनाम/ Vs.</b>	<b>ITO-Ward-2,</b> Kancheepuram
<b>स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AFTPB-8395-R</b>		
<b>(□ पीलार्थी/Appellant)</b>	<b>:</b>	<b>(प्रत्यर्थी / Respondent)</b>

<b>अपीलार्थी की ओरसे/ Appellant by</b>	<b>:</b>	<b>Shri R. Viswanathan (CA) –Ld. AR</b>
<b>प्रत्यर्थी की ओरसे/Respondent by</b>	<b>:</b>	<b>Shri AR.V.Sreenivasan (Addl. CIT) – Ld. DR</b>

<b>सुनवाई की तारीख/ Date of Hearing</b>	<b>:</b>	<b>30-11-2021</b>
<b>घोषणा की तारीख / Date of Pronouncement</b>	<b>:</b>	<b>13-12-2021</b>

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-7, Chennai [CIT(A)] dated 17-10-2018 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 30-03-2015.

2. The registry has noted a delay of 63 days in the appeal, the condonation of which has been sought by the assessee on the strength of affidavit of the assessee. It has been submitted that the order under challenge got misplaced and it took time to compile all the papers. It has also been submitted that the delay was unintentional and there was no undue benefit to the assessee in delaying the appeal. Though Ld. DR opposed the condonation, however, after going through the contents of the affidavit and considering the period of delay, the bench formed an opinion that the delay was to be condoned. Accordingly, we proceed to adjudicate the appeal on merit.

3. The grounds raised by the assessee read as under:

1. The order dated 17.10.2018 of the Learned CIT(A)-7 Chennai in ITA No.64/CIT-A-7/2015-16 for the Assessment year is contrary to facts, opposed to law and untenable.

2. The Learned Commissioner of Income tax (Appeals) grossly erred in confirming the order for Addition of Subsidy, when the amount was not received in the Impugned Assessment year.

2.1. The Learned Commissioner of Income tax (Appeals) erred in confirming the Addition on the short ground that the Appellant has offered the same to tax.

2.2 The Ld CIT(A) ought to have considered that the subsidy received in financial year 2008, cannot be considered as income for AY 2012-2013.

2.3 The Ld CIT(A) ought to have considered that the Subsidy is related to Capital account and not taxable.

4. Having heard rival submissions and after considering the orders of lower authorities, our adjudication would be as given in succeeding paragraphs.

5. Upon perusal of para-3 of the Assessment Order, it could be seen that the assessee received subsidy of Rs.41.51 Lacs which was offered for taxation during the course of assessment proceedings. The same was offered to taxation vide letter dated 27-03-2015, a copy of which is on record. The assessee has offered the same to taxation in view of the

fact that since it was not certain that the same would be awarded to the assessee and accordingly, depreciation on full amount of fixed asset was claimed by the assessee in earlier years.

6. However, during appellate proceedings, the assessee contested this issue and a remand report was sought from Ld. AO. The Ld.AO maintained that the additions were accepted additions and it was only an after-thought on the part of the assessee to contest the same. The remand report was confronted to the assessee; however, the assessee did not make any representation. The Ld. CIT(A) noted that the subsidy was received during November, 2011 and the additions were accepted additions. Therefore, the action of Ld. AO was confirmed against which the assessee is in further appeal before us.

7. Before us, Ld. AR has submitted that considering the purpose test, the subsidy was a capital receipt not chargeable to tax as held by Hon'ble Apex Court in **CIT V/s Ponni Sugars & Chemicals Ltd. (174 Taxman 87)**. The Ld. AR also submitted that the subsidy was received as an incentive and not intended to subsidize the cost of the asset and therefore, such receipts would not be covered by Explanation-10 to Section 43(1) of the Act. On the other hand, Ld. DR maintained that double benefit could not be granted to the assessee and the additions were accepted additions.

8. We find that in terms of Explanation 10 to Section 43(1), where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Government or any local authority, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the

assessee. It is the submission of Ld. AR that the subsidy was granted as on incentive and not towards meeting the cost of the asset and therefore, the depreciation on full amount would be allowable to the assessee and at the same time, the subsidy being capital in nature, would be capital receipts not chargeable to tax. We find that lower authorities has not considered these aspects of assessee's submissions and merely gone by the admission made by the assessee. Therefore, we deem it fit to restore the matter back to the file of Ld. CIT(A) to bring on record factual matrix of the issue on record and adjudicate the same in the light of submissions made by Ld. AR before us. The assessee, in turn, is directed to substantiate the claim. We order so.

9. The appeal stand allowed for statistical purposes.

*Order pronounced on 13<sup>th</sup> December, 2021.*

**Sd/-**  
**(V.Durga Rao)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

चेन्नई Chennai; दिनांक Dated : 13/12/2021  
TLN

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चेन्नई / DR, ITAT, Chennai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, चेन्नई / ITAT, Chennai**