

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.852/PUN/2019
निर्धारण वर्ष / Assessment Year: 2014-15

DCIT, Circle-1, Nashik	Vs.	Haldex India Pvt. Ltd., B-71, MIDC, Ambad, Nashik- 422010. PAN : AABCH9044B
Appellant		Respondent

Revenue by : Shri S. P. Walimbe
Assessee by : Shri R. D. Onkar &
Shri Viksit Bhargava

Date of hearing : 18.05.2022
Date of pronouncement : 19.05.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)- 1, Nashik dated 01.03.2019 for the assessment year 2014-15.

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

- "01. Whether on the facts and in the circumstances of the case, the Ld. CIT(A)-1, Nashik is justified in deleting the addition of Rs.4,58,41,000/- made U/s 28(iv) of the Act on account of Octroi refund treating it revenue in nature.*
- 02. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.*
- 03. The assessee craves leave to add, amend, alter or delete any ground of appeal."*

3. Briefly, the facts of the case are that the respondent-assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing and sale of connecting rods assembling and other engineering goods. The return of income for the assessment year 2014-15 was filed on 28.11.2014 declaring total income of Rs.14,41,63,860/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Circle-1, Nashik ('the Assessing Officer') vide order dated 21.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.19,00,04,860/-. While doing so, the Assessing Officer brought to tax the subsidy received in the form of octroi refund of Rs.4,58,41,000/- as revenue receipts invoking the provisions of section 28(iv) of the Act. The subsidy was received from the Government of Maharashtra under the Package Scheme of Incentives, 2007.

4. Aggrieved by the above assessment of order, an appeal was filed before the Id. CIT(A), who vide impugned order held that the subsidy in the form of octroi refund received under the Package Scheme of Incentives, 2007 announced by the Government of Maharashtra is capital in nature as the subsidy was granted as incentives to encourage the dispersal of Industries to the less

developed area of the State placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Ponni Sugars & Chemicals Ltd., 306 ITR 392 (SC). Further, the ld. CIT(A) held that the provisions of section 28(iv) have no application to the monetary benefits received by the respondent-assessee placing reliance on the following decisions :-

- (i) *CIT vs. Indokem Ltd., 132 ITR 125 (Bombay High Court).*
- (ii) *CIT vs. Alchemic Pvt. Ltd., 130 ITR 168 (Gujarat High Court).*
- (iii) *Ravinder Singh vs. CIT, 205 ITR 353 (Delhi High Court).*
- (iv) *CIT vs. New India Industries Ltd., 204 ITR 208 (Gujarat).*
- (v) *CIT vs. Mafatlal Gangabhai and Company Pvt. Ltd., 219 ITR 644 (SC).*

5. Being aggrieved by the above decision of the ld. CIT(A), the Revenue is in appeal before us.

6. The ld. Sr. DR contended that since the respondent-assessee had received octroi refund, the subsidy is granted only to meet the cost of operations of the respondent-assessee company. Therefore, the amount of subsidy should be treated as revenue receipts placing reliance on the decision of the Hon'ble Supreme Court in the case of Sahney Steel & Press Works Ltd. vs. CIT, 228 ITR 253 (SC) and the provisions of section 28(iv) of the I.T. Act.

7. On the other hand, ld. AR placing reliance on the following decisions :-

- (i) *Chaphalkar Bros. (Supreme Court) Civil Appeal No 6513-6514 of 2012.*

- (ii) *Ponni Sugars and Chemicals Limited (Supreme Court) 306 ITR 392.*
- (iii) *Kirloskar Oil Engines (Bombay High Court) (ITA 2646 of 2011).*
- (iv) *Innoventive Industries Limited vs. DCIT (ITA 215/PUN/2014).*

submitted that the subsidy was granted as incentives to achieve higher and sustainable economic growth with emphasis on balanced Region Development. Therefore, the object of subsidy is only to encourage the dispersal of industries to the less developed areas of the State of Maharashtra and it should be treated as capital receipts and the provisions of section 28(iv) to the present case have no application to the monetary benefits received by the respondent-assessee.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the taxability of the subsidy received by the respondent-assessee under the Package Scheme of Incentives, 2007 announced by the Government of Maharashtra. We have gone through the nature of subsidy granted to the assessee by the Govt. of Maharashtra under Package Scheme of Incentives, 2007. A copy of the Scheme has been placed in paper book. The Preamble of the Scheme states that: "... The State has declared the new Industrial, Investment, Infrastructure Policy 2006 to ensure sustained Industrial growth through innovative initiatives for development of key potential sectors and further improving the

conducive industrial climate in the State, for providing the global competitive edge to the State's industry. The policy envisages grant of fiscal incentives to achieve higher and sustainable economic growth with emphasis on balanced Regional Development and Employment generation through greater Private and Public Investment in industrial development." The Scheme talks of granting incentives subject to Eligibility Criteria in favour of the Eligible Units. The definition clause in the Scheme provides that "An Eligibility Certificate under the 2007 Scheme will be issued by the Implementing Agency after ascertaining that the eligible unit has complied with the provisions of the Scheme and has commenced its commercial production." clause 5 of the Scheme states that "New projects, which are set up in these categories in different parts of the State, will be eligible for Industrial Promotion Subsidy. The quantum of subsidy will be linked to the Fixed Capital Investment. Payment of IPS every year will be equal to 25% of any Relevant Taxes paid by the eligible unit to the State or to the any of its departments or agencies." Modalities for sanction and disbursement of IPS 2007 have been given by the Govt. of Maharashtra which state that the Industrial Promotion Subsidy in respect of Mega projects under PSI 2001 and 2007 means an amount equal to the percentage of "Eligible Investments" which has

been agreed to as a part of the customised Package, or the amount of tax payable under Maharashtra VAT 2002 and CST Act 1956 by the eligible Mega Projects in respect of sale of finished products eligible for incentives before adjusting of set off or other credit available for such period as may be sanctioned by the State Government, less the amount of benefits by way of Electricity Duty exemption, exemption from payment of Stamp Duty, refund of royalty and any other benefits availed by the eligible Mega Projects under PSI 2001/2007, whichever is lower. A careful perusal of the PSI, 2007 emphatically manifests that the subsidy had been granted to encourage industrial growth in less developed areas of the State. The quantification of subsidy is linked with the amount of investment made in setting up of the eligible units. However, the disbursement of the subsidy is in the form of refund of VAT and CST paid on sale of excavators. In our considered opinion, the decisive factor for considering the nature of subsidy as a capital or revenue receipt is the 'purpose' for which the subsidy has been granted and not the manner of its disbursement. The Hon'ble Supreme Court in *Sahney Steel & Press Works Ltd. v. CIT* [1997] 94 Taxman 368/228 ITR 253 has held in the facts of that case that the operational subsidy received after the commencement of business was a revenue receipt but simultaneously laid down the ratio

decidendi of applying the 'purpose test' for ascertaining the true nature of subsidy. The purpose test has been reiterated by the Hon'ble Supreme Court in CIT v. Ponni Sugars & Chemicals Ltd. [2008] 174 Taxman 87/306 ITR 392 by holding that the relevant consideration should be the purpose of subsidy and not its source or mode or payment. When we apply such a test on the facts and circumstances of the case, it demonstrably emerges that the purpose of subsidy is industrial growth; it is linked with the setting up of industrial units; and the amount of subsidy is linked with the amount of investment made in the eligible unit. Simply because the subsidy has been disbursed in the form of refund of VAT and CST, it will not alter the purpose of granting the subsidy, which is nothing but establishment of new industrial units in less developed areas of the State. The authorities below have been swayed by the fact that the subsidy was granted post commencement and is in the nature of refund of VAT and CST and overlooked the purpose of its granting, which is nothing but momentum in industrial pace in less developed parts of the State. Testing the factual panorama on the touchstone of the ratio laid down by the Hon'ble Supreme Court in the above referred cases, we are of the considered opinion that the subsidy of Rs.4,58,41,000/- is a capital receipt and not chargeable to tax.

9. At this stage, it is relevant to mention that we are concerned with the A.Y. 2014-15. The Finance Act, 2015 has inserted clause (xviii) to section 2(24) w.e.f. 1-04-2016 providing that the assistance in the form of subsidy or grant of cash incentives etc., other than the subsidy which has been taken into consideration in determining the actual cost of the asset in terms of Explanation 10 to section 43(1), shall be considered as an item of income chargeable to tax. Since the amended provision of section 2(24)(xviii) is not applicable to the year under consideration, the sequitur is that the subsidy received by the assessee would not form part of its total income.

10. Similarly, the Hon'ble Supreme Court in the case of CIT vs. Chaphalkar Brothers Pune, 400 ITR 297 (SC) after referring to its earlier decision in the case of Ponni Sugars & Chemicals Ltd. (supra) held as under :-

“21. What is important from the ratio of this judgment is the fact that Sahney Steel was followed and the test laid down was the "purpose test". It was specifically held that the point of time at which the subsidy is paid is not relevant; the source of the subsidy is immaterial; the form of subsidy is equally immaterial.

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 *Shree Balaji Alloys v. CIT* [2011] 9 taxmann.com 255/198 Taxman 122/ 333 ITR 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 & Chemicals Ltd. case* (*supra*) 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.”*

11. Applying the ratio of the decision of the Hon’ble Supreme Court referred to above, to the facts of the present case, since the subsidy was granted actually as incentives for encouraging the dispersal of industries to the less developed areas of the State of Maharashtra, the subsidy cannot be treated as revenue receipt.

As regards to the applicability of provisions of section 28(iv) of the Act, this envisages the value of entire benefit, whether convertible to money or not, which means the benefits have to be in the kind, the monetary benefits are not covered by the said provisions of the Act as in the catena of following decisions :-

- (i) *CIT vs. Indokem Ltd., 132 ITR 125 (Bombay High Court).*
- (ii) *CIT vs. Alchemic Pvt. Ltd., 130 ITR 168 (Gujarat High Court).*
- (iii) *Ravinder Singh vs. CIT, 205 ITR 353 (Delhi High Court).*
- (iv) *CIT vs. New India Industries Ltd., 204 ITR 208 (Gujarat).*
- (v) *CIT vs. Mafatlal Gangabhai and Company Pvt. Ltd., 219 ITR 644 (SC).*

12. In the light of the above legal position, we do not find any merit in the grounds of appeal filed by the Revenue. Hence, the grounds of appeal filed by the Revenue stand dismissed.

13. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on this 19th day of May, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 19th May, 2022.

Sujeet

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, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.