IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM AND SHRI PAVAN KUMAR GADALE, JM

ITA No. 7271/Mum/2018
(Assessment Year 2013-14)

<table>
<tr><td>The Dy. Commissioner of Income Tax, Central Circle 3(3)(2), room No. 638, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020</td><td rowspan="2">Vs.</td><td>Sudal Industries Limited
26, Nariman Bhavan, 227, Nariman Point, Mubai-400 021</td></tr>
<tr><td>(Appellant)</td><td>(Respondent)</td></tr>
<tr><td colspan="3">PAN No. AAACS0705K</td></tr>
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ITA Nos. 129/Mum/2019
(Assessment Year 2013-14)

ITA Nos. 130/Mum/2019
(Assessment Year 2014-15)

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26, Nariman Bhavan, 227, Nariman Point, Mubai-400 021</td><td rowspan="2">Vs.</td><td>The Dy. Commissioner of Income Tax, Central Circle 3(3)(2), room No. 638, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020</td></tr>
<tr><td>(Appellant)</td><td>(Respondent)</td></tr>
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Assessee by	:	Shri Ajay Singh,AR
Revenue by	:	Shri Hoshang B. Irani, DR

Date of hearing:	24.03.2022
Date of pronouncement :	20.06.2022

O R D E R

PER PRASHANT MAHARISHI, AM:

01. These are three appeals pertaining to the same assessee, and therefore same are disposed of by this common order.

AY 2013-14
ITA No 7271/M/2018 [By AO]
ITA No 129/M/2019 [By Assessee]

02. ITA No. 129/Mum/2019 is filed by the assessee for A.Y. 2013-14 against the order of the learned Commissioner of Income-tax (Appeals)-8, Mumbai [CIT (A)] dated 22.10.2018 and ITA No.7271/Mum/2018 for A.Y. 2013-14 is field by the learned Dy. Commissioner of Income Tax-3(3)(2) (the learned Assessing Officer) against the same order of learned CIT (A).

03. Assessee's ground of appeal in ITA No.129/Mum/2019

> *"1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the order of learned assessing officer with regards to disallowance of interest of Rs. 21,36,252/- on account of provisions of section 36 (1)(iii) of the Income Tax Act, 1961. It is submitted that the Hon'ble CIT(A) has made such arbitrary disallowance without considering the facts and circumstances of the case and stating the arguments of the appellant are hypothetical in nature. It is therefore prayed that disallowance of interest of Rs. 21,36,252/- is unjustified, unwarranted and shall be deleted and necessary direction shall be given in this regard.*

2. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the addition of Rs.1,32,07,000/- being amount received as Grant by treating the same as Business Income. It is submitted that the Hon'ble CIT(A) erred in treating the Grant as revenue in nature instead as capital in nature as treated by the appellant. It is therefore prayed that addition of Grant received of Rs. 1,32,07,000/- shall be deleted and necessary direction shall be given in this regard."

04. Revenue's ground of appeal in ITA No.7271/Mum/2018:-

"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs. 2,12,63,638/- as the dies written off without appreciating that such revaluation is capital in nature and not allowed to be claimed as a business expenditure nor reduced from the computation of income. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

The appellant craves leave to amend, alter, delete or add grounds which may be necessary."

05. Facts of the case show that Assessee Company is engaged in the business of manufacturing and selling of aluminum extrusion and alloys. It filed its return of income on 30th November 2013 at a loss of ₹42,03,160/- . The return of income was picked up for scrutiny and assessment order under Section 143(3) of the income tax Act, 1961 (the Act) was passed on 17th March 2016 at ₹5,76,15,590/-. The assessee also disclosed the book profit under Section 115JB of the Act, at a loss of ₹1,42,11,185/- which was adjusted to derive at a book profit of ₹4,86,81,823/-.

06. In the normal computation of total income,

a. Learned Assessing Officer disallowed the interest expenditure of ₹21,36,252/- on advance given by the assessee without charging any interest.

b. Further, assessee has showed adjustment of Dies written off of ₹2,12,63,638/- which was disallowed holding that Dies are part of plant and machinery and therefore, same is not allowable as business expenditure but as capital expenditure.

c. The learned Assessing Officer also noted that assessee has incurred expenses of ₹1,50,125/- for increasing authorized share capital. The

learned Assessing Officer disallowed holding that same as capital expenditure.

d. Further, assessee has received State Government subsidy for expansion of capacity in the form of Octroi duty refund of ₹ 2,10,50,620/-. The above sum has sum has been directly added to the capital reserve and not routed through profit and loss account. The learned Assessing Officer held that during the year, assessee has paid octroi of ₹1,75,63,594/- and got incentive of ₹1,32,07,000/-. Accordingly, the learned Assessing Officer made the addition of the Government grant of ₹1,32,07,000/- as business income and did not accept that same is capital receipt.

07. The learned Assessing Officer also made an adjustment of this sum in the book profit under Section 115JB of the Act of the above subsidy and computed book profit of ` 486,81,823/- by making an addition of ` 132,07,000/- to the net profit as per profit and loss account of ` 3,54,74,823/- .

08. Assessee aggrieved with the same, preferred the appeal before the learned CIT (A). The learned CIT (A)

a. Confirmed the disallowance of interest of ` 21,36,252/–. The assessee before learned CIT (A) submitted that it has its own fund of ₹27.38 crores, on which no interest is paid and further, interest free deposit for premises is given of ₹1,78,02,100/- for business purposes. The learned CIT (A) rejected the same holding that it is merely a hypothetical concept.

b. Deleted disallowance of ₹2,12,63,638/- Dies written off, he held that the Dies are valued by the registered Government valuer and the resultant loss is debited to the Profit and Loss account. He further noted that there is no sale of Dies during the year and further, the same is not capital loss. He further noted that at the end of the year, assessee valued the Dies and resultant revenue loss or the profit is routed through Profit and Loss account.

c. Confirmed addition with respect to the Government grant of ₹1,32,07,000/-, he held that the Government grant is given for payment of Octroi duty, originally paid by the assessee which is refund by the Government. Therefore, it cannot be termed as capital receipt. Accordingly, the learned CIT (A) upheld the action of the learned Assessing Officer.

09. Therefore, both the parties are aggrieved by the order of learned CIT (A) and has preferred Cross appeals before us.

010. In the appeal of the learned Assessing Officer, the solitary ground raised is with respect to deletion of disallowance of ₹2,12,63,638/- on account of Dies written off.

011. The learned Departmental Representative stated that the Dies are part of plant and machinery and therefore, any loss on account of that is a capital loss and cannot be allowed as deduction as revenue expenditure.

012. The learned Authorized Representative vehemently supported the order of the learned CIT (A). He referred to computation of total income placed at page no. 2 of the Paper Book, where assessee has shown the Dies written off amounting to ₹2,12,63,638/-. He referred to Note no. 20 of the financial statements to show that the consumption of raw materials and component of ₹6,853.70 lacs includes the above adjustment. He also submitted breakup of the above amount. The breakup shows that the raw material consumption for the year was `7,222/- lacs, ₹2,12,63,000/- is reduced from the above consumption on account of Dies written off resulting into net raw material consumption of 7,900.90 lacs. From the above sum of ₹1,056.20 lacs

was further reduced on account changes in inventory. Accordingly, consumption of raw material of ₹68,53,74,457/- was claimed. He further referred to the copy of the valuation report of Dies as on 31st Marc, 2013 paced at page no. 184 of the Paper Book. He therefore submitted that the LD CIT [A} has correctly deleted the addition.

013. We have carefully considered the rival contentions and perused the orders of the lower authorities. The facts produced before us clearly shows that assessee has not claimed any deduction with respect to the dies written off amounting to ₹ 21,263,638/–. This is evident from these facts. Looking at the computation of the total income filed by the assessee, which is placed at page number 2 of the paper book, clearly shows that raw material consumption in the net profit and loss as per profit and loss account amounting to ₹ 35,474,823/–, assessee has reduced the amount of dies written off amounting to ₹ 21,263,638. This has arisen because of the reason that in the raw material consumed by the assessee of ₹ 68,53,70,457/– assessee has credited of ` 2,12,63,638/– which is arising on valuation of dies.. Therefore, it is apparent that raw material consumption has been reduced to the extent of ₹ 21,263,638/–. This is for the reason that every year assessee is making valuation of dies at the end of the year and resultant profit or loss compared to the

valuation of earlier year, the same is credited or debited to raw material consumption account the profit and loss account. At the time of preparing the computation of total income, if valuation has gone down, it is debited to the profit and loss account (raw material consumed) and in the computation of total income, it is not claimed as deduction from business income. Similarly, if there is any increase in valuation, such increase is credited to the profit and loss account (raw material consumed) and thereby showing lower amount of raw material consumed, but at the time of computation of total income such credit is removed from the profit and loss account. This is so because the valuation increase/decrease in the dies is not at all revenue expenditure. Similarly, assessee never claims it is a deduction. The learned lower authorities did not appreciate that difference in valuation in dies is merely rotated through profit and loss account but it did not affect the computation of total income for taxation. The confusion might have arisen because of the nomenclature given by the assessee of the particular item. However, such nomenclature should not have come into the way of lower authorities in determining the correct nature of treatment to be given while computing the taxable income of the assessee. In view of this, obviously for the above reasons given by us, we do not find any infirmity in the order of the learned CIT – A in deleting the addition made by the learned assessing

officer. Accordingly, the solitary ground raised by the learned assessing officer is dismissed.

014. In the result ITA number 7271/M/2018 filed by the learned assessing officer for assessment year 2013 – 14 is dismissed.

015. Now we come to the appeal of the assessee. First ground of appeal is in relation to the disallowance of interest of ₹ 2,136,252/– confirmed by the learned CIT – A. The facts leading to the above disallowance shows that in the financial statement AO notice that the assessee company has given a deposit for premises of ` 1,78,02,100/– which is shown Under short term loans and advances in schedule 16 of the balance sheet. He further noted from the financial statements that assessee has taken a loan to the tune of ₹ 97,177,518/– on which it has incurred interest expenditure of ₹ 39,999,602/–. During the course of assessment proceedings, the assessee submitted the details of the above deposit stating that it has been given for the premises on which no income is derived or accrued and therefore no interest can be disallowed on this proposition. However, the learned assessing officer noted that on the one hand, assessee is paying interest on borrowed funds and on the other hand, assessee has given these advances without charging interest. Therefore, the learned assessing officer proposed to disallow the proportionate interest expenditure. The

assessee objected to the same and stated that the deposit is refundable deposit given in earlier year against certain monthly outgo for use of business places in Mumbai and vadodara, which are placed with associated concerns owning the property. The learned assessing officer rejected the contention of the assessee and held that assessee has taken interest bearing loans and utilized it for giving as deposit for premises to its related party and no evidences accept board resolutions have been submitted which in no way proves that the assessee had actually utilize the premises of its sister concerns. Assessee even failed to furnish a list of its sister concerns with who is such deposits have been placed. Against this, assessee has taken huge loans on which it is paying interest, therefore, the learned assessing officer disallowed the interest expenditure of ₹ 2,136,252/– computing at the rate of 12% on advances of ` 178,02,100/– and held that this is a non-business expenditure which is disallowed u/s 36 (1) (III) of the act. The assessee challenged this disallowance before the learned CIT – A stating that assessee has sufficient own funds and the borrowings have not been utilized for giving deposit. The learned CIT – A upheld the disallowance holding that that if there are enough interest free funds or free reserves available with the assessee, why assessee has borrowed and paid such huge interest. Therefore, the argument of the assessee is just a

hypothetical concept. Therefore, assessee is in appeal before us.

016. The learned authorised representative repeated the arguments stating that assessee has its own non-interest-bearing funds to the extent of ₹ 27.38 crores and where as the advance/deposit given is merely `1.78 crores, there cannot be any disallowance of interest expenditure.

017. The learned departmental representative supported the orders of the lower authorities.

018. We have carefully considered the rival contentions and perused the orders of the lower authorities. The clear-cut finding on reading of the annual accounts of the assessee shows that assessee has interest free funds available with it in the form of share capital and free reserve amounting to ₹ 273,830,630/– which is a much more than the interest free advances given by the assessee to its sister concern. Therefore the presumption is always available in favour of the assessee that assessee has utilised non-interest-bearing funds for giving impugned deposit to the sister concern. The contention of the assessee is also supported by several judicial precedents, which have upheld the above proposition. In view of this, we do not find any reason to uphold the orders of the lower authorities. Accordingly, ground number 1 of the appeal is

allowed and the learned AO is directed to delete the disallowance of interest of ₹ 2,136,252/–.

019. The second ground of appeal is with respect to treating the grant received by the assessee of `1 32,07,000 as revenue receipt chargeable to tax against the contention of the assessee that same is a subsidy, therefore, it is a capital receipt not chargeable to tax. On perusal of the annual accounts of the assessee, the learned AO noted that company has received State government subsidy for expansion of capacity. It is in the form of octroi duty refund of ₹ 21,050,620/–. Instead of crediting it to the profit and loss account, the assessee has credited directly to capital reserve account. Therefore, the learned AO asked the assessee to show evidences in support of the above claim. Assessee submitted that government of Maharashtra has announced the package scheme of 2011 wherein the industrial units are eligible for grant in the form of subsidy. In accordance with the above scheme, the assessee company has carried out its expansion. Against the total investment of ₹1786 lakhs the State government has issued, two eligibility certificate of ₹ 517 lakhs and further of ₹ 557 lakhs. The computation of the above benefit is being refund of octroi duty paid on material purchased by the assessee and received at its factory in Nasik. As per the scheme, the assessee has received the grant of ₹

132,07,000/– in financial year 2011 – 12 relevant to the impugned assessment year. In view of this, assessee submitted that the grant received by the assessee is a capital receipt and not chargeable to tax. The assessee also submitted the object of the scheme and stated that it is for industrialization of a particular region and therefore it is capital receipt. The learned assessing officer rejected the explanation of the assessee. The reasons of such rejection were that it is not a one-time subsidy granted by government of Maharashtra but it is a recurring in nature. Further, it is paid on a year-to-year basis based on percentage of duty paid on receipt of material. Thus, grant receivable is ascertainable. He further held that either these grants can be reduced from the cost of the project or it can be the revenue receipts. The learned AO further relied on the decision of the honourable Supreme Court in case of CIT versus Meghalaya steels Limited. Thus, he considered the amount of subsidy of ` 132,07,000/– received by the assessee as business income and further the same was added to the book profit computed u/s 115 JB of the act. The assessee agitated this issue before the learned that CIT – A. The learned CIT – A relying on the decision of the honourable Supreme Court in 189 ITR 774 stated that that decision has laid down the basic principle to be applied for determining as to whether the subsidy is in the nature of capital or revenue

receipt. He noted that if the purpose of subsidy is to help the assessee to set up its business or complete a project installation, the money must be treated to have been received for capital purposes. However, if sum is given to the assessee for assisting him in carrying out the business operation and it is given only after and conditional upon commencement of production, such subsidies must be treated as assistance for the purpose of trade. He further referred to the decision of the honourable Supreme Court in 208 Taxation 59 stating that honourable Supreme Court observed that one has to apply the 'purposive test' to decide the nature of the subsidy and the form of subsidy is immaterial. Thereafter, he noted that the subsidy received by the appellant company has not been received for capital purposes according to the preamble itself wherein it is stated that the "state has declared the new industrial investment infrastructure policy 2006 to ensure sustained growth through innovative initiatives for development of key potential sectors and further improving the conducive industrial climate in the state for providing competitiveness of the state industry". The scheme of government of Maharashtra is such that it gives back 75.20% of the octroi duty paid by the company. Now the octroi is paid on movement inwards of raw material. So the more production, the more shall be the purchase of raw material and therefore there shall be more payment

of octroi and conclusively more shall be the subsidy received by the company. Further, the subsidy is paid on yearly basis. Accordingly, he held that by no stretch of imagination the above subsidy could be treated as a capital receipt. He further noted that assessee has not at all been able to produce any one decision wherein such a refund of octroi duty has been held to be non-taxable. Accordingly, he confirmed the action of the learned assessing officer.

020. The learned authorised representative referred to a detailed note on grant of subsidy placed at page number 87 of the paper book. He further referred to of the 'package scheme of 2007' placed at page number 94 – 108 of the paper book. He referred to page number 116 of the paper book to show that assessee has made an investment of `517.58 lakhs and based on that assessee has been granted the above subsidy. He further stated that the object of the scheme is to 'promote industrialization'. Accordingly, the above subsidy is capital receipt in the nature. He further referred to several judicial precedents to support his case. He mainly relied on the decision of the honourable Supreme Court of India in case of CIT versus Chapalkar brothers (2018) 400 ITR279 (SC) wherein even entertainment duty payment was held to be a capital receipt. He further submitted that the octroi duty refund is also exactly on the similar lines. He therefore submitted

that the issue is squarely covered in favour of the assessee as the object and purpose of the subsidy is industrialization.

021. The learned departmental representative vehemently supported the orders of the lower authorities.

022. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the coordinate bench has decided this issue in case of ACIT versus MSS India Pvt Ltd ITA No.1909/PUN/2016 dated 2/1/2019 as under:-

"7. Both sides heard. Orders of the authorities below perused. The solitary issue raised by the Revenue in appeal is against CIT(A) allowing incentive received by the assessee from Govt. of Maharashtra in the form of Octroi refund as capital subsidy. It is an admitted fact that ITA No.1909/PUN/2016 MSS India Pvt. Ltd., the assessee has received incentive in the form of Octroi refund under Govt. of Maharashtra Package Scheme of Incentives, 2007. We find that the Coordinate Bench of the Tribunal in the case of ACIT Vs. M/s.Universal Construction Machinery and Equipments Ltd. (supra) in an identical set of facts has held subsidy received by the assessee under Package Scheme of Incentives, 2007 as capital in nature. Relevant extract of the order of Tribunal reads as under:

"5. We have heard the submissions made by Id. DR and have perused the material available on record. Before the Assessing Officer the assessee has submitted that during the period relevant to the assessment year 2012-13 has received subsidy of `13,37,61,000/- up to 31-03-2012 and the balance amount of `2,36,05,000 / - is stated to be receivable as on 31-03-2012. The subsidy was

sanctioned to the assessee under the Package Scheme of Incentives, 2007 of the State Government, against investment of Rs.26.77 crores made by the assessee in land, factory building, plant and machinery, electrical installation etc. The Commissioner of Income Tax (Appeals) granted relief to the assessee by following the order of Tribunal in the case of M/ s. John Deere Equipments Pvt. Ltd. Vs. Dy. Commissioner of Income Tax (supra). We find that the Co-ordinate Bench of the Tribunal in the aforesaid case has placed reliance on the decision in the case of Commissioner of Income Tax Vs. Reliance Industries Ltd. reported as 339 ITR 632, wherein subsidy sanctioned to the assessee under similar Package Scheme of Incentives, 1993 was held to be capital in nature. The Id. DR has failed to controvert the findings of Commissioner of Income Tax (Appeals). In the absence of any contrary material on record, we uphold the findings of First Appellate Authority in deleting the addition in respect of subsidy received by the assessee holding it to be capital in nature. Accordingly, the appeal of the Revenue is dismissed being devoid of any merit."

8. The ld. DR has failed to convert the findings given by the Tribunal in the said case. We do not find any infirmity in the impugned order. Accordingly, the same is confirmed and the appeal of Revenue is dismissed."

023. Therefore respectfully following the decision of the coordinate bench, we also hold that the subsidy received by the assessee in the form of octroi duty refund of ₹ 132,07,000/– is a capital receipt not chargeable to tax. Accordingly, we allow ground number 2 of the appeal of the assessee.

024. In the result, appeal filed by the assessee for assessment year 2013 – 14 is allowed.

025. Assessee's ground of appeal in ITA No. 130/Mum/2019 for assessment year 2014 – 15 against the order passed by the learned Commissioner of Income Tax (Appeals) – 8, Mumbai dated 22/10/2018 are as Under

"1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the order of learned assessing officer with regards to disallowance of interest of Rs. 21,36,252/- on account of provisions of section 36 (1)(iii) of the Income Tax Act, 1961. It is submitted that the Hon'ble CIT(A) has made such arbitrary disallowance without considering the facts and circumstances of the case and stating the arguments of the appellant are hypothetical in nature. It is therefore prayed that disallowance of interest of Rs. 21,36,252/- is unjustified, unwarranted and shall be deleted and necessary direction shall be given in this regard.

2. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the addition of Rs.73,75,324 /- being amount received as Grant by treating the same as Business Income. It is submitted that the Hon'ble CIT(A) erred in treating the Grant as revenue in nature instead as capital in nature as treated by the appellant. It is therefore prayed that addition of Grant received of Rs.

Rs.73,75,324/- shall be deleted and necessary direction shall be given in this regard."

026. We find that ground number [I] of the appeal is identical to ground number 1 of the appeal of the assessee for assessment year 2013 – 14 and ground number [2] of the appeal is identical to ground number [2] of the appeal of the assessee for assessment year 2013 – 14. For the reasons given by us, while deciding those grounds by these impugned order squarely apply to these two grounds in the appeal for assessment year 2014 – 15. There is no change in the facts and circumstances of the case.

027. In view of this, we allow ground number [1] of the appeal of the assessee wherein the learned assessing officer made disallowance of ₹ 2,136,252/– on account of interest for the reason that assessee has given interest free deposit. We reverse the orders of the lower authorities.

028. Similarly, ground number [2] of the appeal is whether the subsidy received on refund of octroi duty of ₹ 7,375,324/– is a capital or revenue receipt. We have already held in assessment year 2013 – 14 that such sum is capital receipt. Therefore, we also allow ground number 2 of the appeal of the assessee.

029. Accordingly, appeal of the assessee for assessment year 2014 – 15 is allowed.

030. In the result, appeal filed by the learned assessing officer for assessment year 2013 – 14 is dismissed and appeal filed by the assessee for the same year as well as for the assessment year 2014 – 15 is allowed.

Order pronounced in the open court on 20.06.2022.

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 20.06.2022
Sudip Sarkar, Sr.PS
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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai