

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.7612 & 7613/Del/2018
Assessment Year: 2005-06 & 2006-07

DCIT Central Circle -18 New Delhi	Vs	Montage Enterprises P. Ltd., C-53, Shashi Garden, Near Pocket-V, Gurudwara, Mayur Vihar, Phase-I, Delhi PAN No.AACCM8173H
(APPELLAN		(RESPONDENT)

Appellant	Ms. Rinku Singh, CIT DR
Respondent	Sh. M. P Rastogi, Advocate

Date of hearing:	26/07/2022
Date of Pronouncement:	26/07/2022

ORDER

PER N.K. BILLAIYA, AM:

ITA No.7612/Del/2018 and 7613/Del/2018 are two separate appeals by the revenue preferred against two separate orders of the CIT(A)-29, New Delhi dated 13.09.2018 pertaining to A.Y.2005-06 and 2006-07.

2. Since common grievance is involved in both appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in the captioned appeals read as under :-

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that there is no provision under the Act to make an amendment in the return of income by modifying an application at the assessment stage without revising the return.
2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the decision of Apex Court in the case of *Goetze (India) Limited V. Commissioner of Income Tax (2006) 157 Taxmann* wherein it is held that the assessee cannot make an amendment in the return of income through an application at assessment stage without revising the return.
3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that the assessee could not claim an enhanced relief or deduction in proceedings u/s 153A. The provision u/s 153A is for the benefit of the revenue and not for benefit of assessee.
4. On the facts and in the circumstances of the case, the Ld. CIT(A) has failed to take cognizance of Supreme Court ruling in the case of *Chettinad Corporation (P) Vs. CIT (1993) 200 ITR 320 (SC)* which provides that the assessee cannot make enhanced claim in the returns filed u/s 153A, whereas no such enhanced claim was made in the returns filed u/s 139(1) or 139(5) of the Income Tax Act.
5. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in treating the cenvet credit as capital receipt by relying upon the judgement of Hon'ble High Court of Jammu & Kashmir in the case of *Shri Balaji Alloys & ors Vs. CIT (2011) 239 CTR (J&K)* and endorsed by Apex Court.
6. On the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate a crucial fact that the Apex Court's decision in the case of *M/s Shree Balaji Alloys* has been decided merely relying upon the Apex Court's decision in the case of *CIT vs Ponnii Sugars & Chemicals Ltd.*, in which the facts are not at all identical to the instant case.
7. On the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate the fact that Apex Court in *Ponni Sugar* case has held that the object of subsidy/assistance will determine the nature of incentive subsidy. The Ld. CIT (A) has erred in not considering the object/purpose for which subsidy was given to assessee in the form of Cenvet.
8. That the grounds of appeal are without prejudice to each other.
9. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time hearing of the appeal.

4. At the very outset the Counsel for the assessee brought to our notice that the issues raised by the revenue have been decided by this Tribunal in favour of the assessee and against the

revenue by its order dated 29.06.2018 for A.Y.2008-09 to 2010-11 and subsequently by order dated 26.11.2021 for A.Y.2012-13 and 2013-14.

5. The DR fairly conceded to this.

6. We have carefully perused the orders of the authorities below. We have also gone through the decision of this Tribunal in ITA No.5124/Del/2011 for A.Y.2008-09, 92/Del/2012 for A.Y. 2008-09, 144/Del/2013 for A.Y.2009-10, 475/Del/2013 for A.Y.2009-10, 4426/Del/2013 for A.Y. 2010-11 and 4906/Del/2013 for A.Y. 2010-11. We find force in the contention of the Counsel this Tribunal in the aforementioned appeal has considered similar quarrel and held as under :-

16. We find that in the case of Balaji Alloys the Hon'ble J&K High Court, on same Govt. Notification has held that excise refund receipt in pursuance of new Industrial policy of the government is a capital receipt. Once that is so, then the entire receipt itself cannot be treated as part of taxable receipt and the entire question of allowing and disallowing the deduction u/s.80IB becomes purely academic. This judgment of Hon'ble Jammu & Kashmir High Court has also been approved and affirmed by the Hon'ble Supreme Court in the case of CIT vs. Shree Balaji Alloys in the civil appeal 10666 of 2013 and other appeals vide judgment and order dated 19th April, 2016 following Ponni Sugar and Chemicals Ltd (supra). Thus, when the excise duty refund has been treated as capital subsidy not part of taxable receipts, then entire controversy sets at rest and accordingly, the finding of the Id. CIT (A) that excise refund is a capital in nature stands confirmed. In view of this finding grounds no.1 and 2 as raised by the Revenue are dismissed.

7. On finding parity of facts respectfully following the decision of the Coordinate Bench (supra) both the appeals of the revenue are dismissed.

8. Decision announced in the open court on 26.07.2022.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- .07.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	26.07.2022
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	