

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “G”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1834/M/2021
Assessment Year: 2001-02**

DCIT, Circle-1(4), 9 th Flr., 902, Pratishtha Bhavan, Old C.G.O. Bldg., (Annexe), M.K. Road, Mumbai - 400020	Vs.	M/s. Grasim Industries Ltd., A-Wing, 2 nd Floor, Aditya Birla Centre, SK Ahire Marg, Worli, Mumbai – 400 030 PAN: AAACG4464B
(Appellant)		(Respondent)

**ITA No.1736/M/2021
Assessment Year: 2001-02**

M/s. Grasim Industries Ltd., Aditya Birla Centre, A-Wing, 2 nd Floor, SK Ahire Marg, Worli, Mumbai – 400 030 PAN: AAACG4464B	Vs.	DCIT, Central Circle-1(4), Room No.902, 9 th Floor, Pratishtha Bhavan, Old C.G.O. Annexe, Maharshi Karve Road, Churchgate, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ronak Doshi, A.R. &
Ms. Ayushi Modani, A.R.

Revenue by : Shri Rakesh Garg, D.R.

Date of Hearing : 22 . 09 . 2022

Date of Pronouncement : 29 . 09 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

Aforesaid cross appeals having been emanated from same impugned order passed by the Ld. Principal Commissioner of Income Tax (Appeals), are taken up for disposal by way of composite order to avoid any repetition of discussion.

2. Appellant DCIT, Circle-1(4), Mumbai (hereinafter referred to as the Revenue) and appellant M/s. Grasim Industries Ltd. (hereinafter referred to as the assessee) by filing aforesaid cross appeals sought to set aside the impugned order dated 08.07.2021 passed by Pr. Commissioner of Income Tax (Appeals) [hereinafter referred to as the PCIT(A)], on the grounds inter alia that:

Grounds of Appeal of Revenue's appeal

ITA No.1834/M/2021

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred, in allowing Sales Tax Subsidy as Capital receipt by relying upon the decision of Hon'ble Bombay High Court in the case of Reliance Industries Ltd. (88 ITD 273) without appreciating the fact that the said decision has been set aside by the Hon'ble Supreme Court and the matter is remitted back to the Hon'ble Bombay High Court

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred, in allowing Sales Tax Subsidy as Capital receipt without appreciating the fact that the scheme are subject to condition of commencement of business, which results in receipts of revenue nature.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not allowing the cost of the block of assets to be reduced by amount of subsidy treated as Capital receipt in view of explanation 10 to section 43(1) of the Income Tax Act, 1961.

4. On the facts and in the circumstances of the case and in law, all the assessment and appellate proceedings, undertaken pursuant to the decision of the Hon'ble IT AT

setting aside the original assessment following the judgment of the Hon'ble Special Bench of the ITAT in the case of Reliance Industries Ltd., 88 ITD 273 (SB), should be quashed, since before the date when the said order(s) of the ITAT was passed, the judgment of the Hon'ble Bombay High Court affirming the decision of the Hon'ble Special Bench had been set aside by the Hon'ble Supreme Court and the matter was restored to the Hon'ble Bombay High Court for fresh adjudication of the question of law framed by the Hon'ble Supreme Court.

5. *On the fact and in the circumstances of the case and in law, in view of the judgment of the Hon'ble Supreme Court dated 2nd July, 1995 in the case of U.P. Rastriya Chini, v. The State of U.P. & Ors., 1995 AIR 2148, 1995 SCC(4) 738, the judgment of the Hon'ble Special Bench of the ITAT in Reliance Industries Ltd. 88 ITD 273 (SB) (supra) is non-est and has no precedent value after the Hon'ble Supreme Court set aside the judgment of the Hon'ble Bombay High Court affirming the judgment of the Hon'ble Special Bench of the ITAT in Reliance Industries Ltd., 88 ITD 373 (SB).*

6. *On the facts and in the circumstances of the case and in law, as held by the Hon'ble Supreme Court in the case of Navopan India Ltd. Hyderabad v. Collector of Central Excise and Customs, Hyderabad, 1994 Suppl (3) Supreme Court Cases, 606, provisions for exemption from taxes should be strictly construed against the assessee and an assessee who claims an exemption has to establish his case; here evidently, the assessee does not maintain the primary records like invoice showing the figure of sales tax collection, sales tax collection register etc. from which it can establish its claim of exemption.*

7. *Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate that the assessee has availed the incentive scheme only and has not received any subsidy because subsidy is a quantified sum received from the Government and hence, it is incorrect to call it a subsidy.*

8. *On the facts and in the circumstances of the case and in law, since the figure of notional sales tax liability/ notional sales tax subsidy is taken from the sales tax assessment order which is passed long after the due date of filing of the income-tax return and the figure is also subject to changes in sale-tax appellate stages, it would be unworkable for the Income-tax Department to adopt those figures because, it would not be possible to file any income-tax return in time in such cases and it would not be possible to chase*

the variations made in the figures in the Sales-tax appellate stages.

9. On the facts and in the circumstances of the case and in law, as held by the Hon'ble Supreme Court in the case of CIT, Bangalore v. B.C. Srinivas Shetty, 11981] 128 ITR 294 (SC), when there is a case to which the computation provision cannot apply, such a case is not intended to fall into the charging section; the approach of the assesses to calculate the so called notional subsidy in a roundabout way does not fit into the scheme of income-tax assessments.

10. The appellant craves leave to add, delete, alter, modify, rectify, substitute or otherwise any or all of the grounds of appeal at or before the time of hearing of the appeal.”

Grounds of Appeal of Assessee's appeal

ITA No.1736/M/2021

“1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not directing the learned AO to exclude Sales tax subsidy, being a capital receipt, from Profit as shown in the statement of profit and loss, while computing Book profit u/s 115JB of the ITA.

2. The Appellant craves leave to alter/ add/ modify/ amend any or all of the grounds of appeal, if need be.”

3. Briefly stated facts necessary for adjudication of the controversy at hand are: the assessee company is into the manufacturing of diversified products such as garments, textiles, insulators, fertilizers, viscose filament yarn, financial services etc. at different units located across the country. On the basis of return of income filed by the assessee company for the year under consideration at the total income of Rs.127,16,67,680/-, assessment was framed at Rs.163,97,41,820/- by making additions/disallowances under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') vide order dated 14.02.2003.

4. During the year under consideration assessee company availed of sales tax incentive of Rs.59,16,17,190/- for setting up new industrial units under the scheme of various state governments. In the first round of litigation co-ordinate Bench of the Tribunal vide order dated 22.10.2014 by admitting the additional ground raised by the assessee company to treat sales tax incentives as capital receipt so as to exclude from the profit of business offered to tax remitted the case back to the Assessing Officer (AO) to decide afresh after considering the decision of the Special Bench of the Tribunal rendered in case of Reliance Industries 88 ITD 273.

5. The AO passed the fresh assessment order under section 143(3) read with section 254 of the Act after considering the submissions made by the assessee company, "that the sales tax subsidy received by the assessee company is revenue in nature in the hands of the assessee company by rejecting the claim of the assessee company that the same is capital receipt and thereby framed the assessment at Rs.987186649/- under section 143(3) read with section 254 of the Act.

6. Assessee carried the matter before the Ld. PCIT(A) by way of filing appeal who has allowed the appeal filed by the assessee. Feeling aggrieved with the impugned order passed by the Ld. PCIT(A) both assessee as well as Revenue have come up before the Tribunal by way of filing present cross appeals.

7. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light

of the facts and circumstances of the case and law applicable thereto.

8. Undisputedly, assessee company has received an amount of Rs.36,05,96,547/- on account of sales tax exemption benefit. The assessee company by relying upon the decision rendered by Special Bench of the Tribunal in case of DCIT vs. Reliance Industries Ltd. 88 ITD 273 sought to treat the sales tax incentives received as capital receipt in nature, which plea has not been accepted by the AO who has proceeded to treat the sales tax subsidy as revenue receipt in the hands of the assessee.

9. In the backdrop of the aforesaid facts and circumstances of the case the sole question arises for determination in this case is:

“As to whether Ld. PCIT(A) has erred in allowing the sales tax subsidy received by the assessee company as capital receipt by relying upon the decision rendered by co-ordinate Bench of the Tribunal in case of Reliance Industries Ltd. (supra).?”

10. Bare perusal of the impugned order passed by Ld. PCIT(A) goes to prove that Ld. PCIT(A) has decided this issue in favour of the assessee by treating the sales tax subsidy received by the assessee company during the year under consideration as capital receipt by relying upon order passed by Special Bench of the Tribunal in case of Reliance Industry Ltd., decision rendered by Hon’ble Bombay High Court in case of Pr.CIT vs. Welspun Steel Ltd. 103 taxmann.com 436 and decision rendered by Hon’ble Gujarat High Court in case of CIT vs. Indian Petrochemical Ltd. 74 taxmann.com 163 and also by relying upon the decision rendered by Hon’ble Supreme Court in case of CIT vs. Ponni Sugars and Chemicals Ltd. 306 ITR 392.

11. At the very outset, the Ld. A.R. for the assessee contended that this issue has already been decided in favour of the assessee by the co-ordinate Bench of the Tribunal for A.Y. 1996-97 to 2000-01 in assessee's own case vide order dated 29.04.2022, copy of order is available at page 1 to 114 of the paper book.

12. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 1996-97 to 2000-01 which is on identical facts qua as to "whether sales tax subsidy/incentive received by the assessee is to be treated as a capital receipt or revenue receipt", the Tribunal by thrashing the facts in the light of the decision rendered by Special Bench of the Tribunal, Hon'ble Bombay High Court and Hon'ble Apex Court of India in the cases referred to in the preceding para reached the conclusion that sales tax subsidy/incentive received by the assessee under the year under consideration are capital receipt not chargeable to tax.

13. The Revenue has filed the present appeal on the sole plea that since order passed by Special Bench of the Tribunal in case of Reliance Industry Ltd. (supra) has already been set aside by the Hon'ble Supreme Court by remitting the matter back to the Hon'ble Bombay High Court, order passed by the Ld. PCIT(A) is not sustainable. But this argument of the Revenue is misplaced because the issues has been thrashed at length in view of the law laid down in case of Welspun Steel Ltd. (supra) and in case of Ponni Sugars and Chemicals Ltd (supra) by the Hon'ble High Court and Hon'ble Supreme Court of India respectively and as such finding no illegality or perversity in the impugned

findings returned by Ld. PCIT(A) in treating the sales tax subsidy/incentive as capital receipt are hereby upheld.

14. The assessee company by filing cross appeal sought to set aside the impugned findings returned by the Ld. PCIT(A) in not directing the AO to exclude sales tax subsidy being a capital receipt from the profit shown in the statement of profit & loss account while computing the book profit under section 115JB of the Act. This issue has already been decided by the Hon'ble Bombay High Court in case of M/s. Harinagar Sugar Mills Ltd., ITA No.1710 of 2014 dated 3rd April, 2017 (Bombay-HC) and ITA No.1132 of 2014 order dated 4th January, 2016 available at page Nos.191 to 196 of case law paper book wherein following question of law was framed.

“(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in upholding the order of Commissioner of Income Tax (Appeals) in directing the Assessing Officer to delete the addition made to book profits on account of subsidy received by way of excise duty?”

15. Aforesaid question of law has been answered in favour of the assessee by the Hon'ble High Court by returning following findings:

“4. Regarding question no.(ii):-

(a) The issue raised in this question is consequential to question no.(i). We have already held that the subsidy received by the respondent-assessee from the State of Bihar was in the nature of capital receipt. Hence the same cannot be added to arrive at book profits of the respondent-assessee under Section 115J of the Act.”

16. So in view of the matter, we direct the AO not to add sales tax subsidy received by the assessee, which is in the nature of capital receipt while computing the book profit under section 115JB of the Act.

17. In view of what has been discussed above while upholding the findings returned by Ld. PCIT(A) the appeal filed by the Revenue is hereby dismissed. However, in view of our findings in the preceding paras, appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 29.09.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.09.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.