

। आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता ।

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER

&

SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 467/Kol/2021

Assessment Year: 2014-15

Shantinath Detergents Pvt. Ltd. P-15, Kalakar Street Kolkata - 700058 [PAN : AADCS4720M]	Vs	Deputy Commissioner of Income Tax, Central Circle - 3(2), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri A.K. Tulsiyan, FCA
Revenue by :	Shri Amal Shudhir Kamat, CIT

सुनवाई की तारीख/Date of Hearing : 29/09/2022

घोषणा की तारीख/Date of Pronouncement : 22/11/2022

**आदेश/ORDER**

**PER MANISH BORAD, ACCOUNTANT MEMBER:**

The present appeal is directed at the instance of the assessee against the order of the learned Commissioner of Income Tax (Appeals) - 21, Kolkata (hereinafter the “ld. CIT(A)”) dt. 30/09/2021, passed u/s 250 of the Income Tax Act, 1961 (“the Act’), for Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:-

“1. That the Ld. CITA) erred in confirming the action of the Ld. AO in rejecting the assessee's rectification petition filed u/s 154 claiming the Subsidy received by the assessee as Industrial Promotion Assistance (IPA) from the state Govt. under West Bengal Industrial Promotion (Assistance to Industrial Units) Scheme, as Capital Receipt in place of Revenue Receipt. The claim of the assessee was rejected by the Ld. AO as well as the Ld. CIT(A) on the ground that the same cannot be claimed by the assessee in the rectification petition u/s 154 since the same was not claimed in the return of income filed by the assessee in view of the decision of Hon'ble Apex Court in case of Goetze India Ltd. vs CIT in 157 Taxman 1. The Ld. CIT(A) did not consider the fact that the assessee's case is squarely covered by judicial decisions on similar facts in the case of Sharda Cropchem Ltd. vs DCIT in 71 ITR (Trib) 141 & DCIT & Kashmir Steel Rolling Mills in 130/Asr/2014. Therefore, the action of the Ld. CIT(A) in rejecting the claim of the assessee is unjustified and the claim needs to be allowed.

2. That the Ld. CIT(A) erred in confirming the action of the Ld. AO in rejecting the assessee's rectification petition filed u/s 154 claiming the

*Subsidy of Rs. 11,78,31,170/- received by the assessee as Industrial Promotion Assistance (IPA) from the state Govt. under West Bengal Industrial Promotion (Assistance to Industrial Units) Scheme, as Capital Receipt in place of Revenue Receipt. The Ld.*

*CIT(A) did not consider the fact that the IPA received by the assessee is a capital receipt as held by the Hon'ble Jurisdictional High Court in case of CIT Vs Rasoi Ltd in 335 ITR 438. Also, the same is held in favour of the assessee in assessee's own case in earlier and subsequent years in IT(SS)A No. 27 to 32/Ko/2019. Therefore, the action of the Ld. CIT(A) in not allowing the claim of IPA as Capital Receipt is completely unjustified and the same needs to be allowed to the assessee.*

3. *That the assessee craves to leave or add, alter, amend or withdraw any ground or ground(s) of appeal before or at the time of hearing."*

3. The facts of the case at that the assessee is a private limited company and it filed its regular return of income for the Assessment Year 2014-15 and assessment was completed u/s 153A/143(3) of the Act on 29/12/2016. The assessee moved an application u/s 154 of the Act on 30/04/2019 claiming that the assessee failed to exclude the sales tax incentive received from West Bengal Government under Industrial Promotion (Assistance to Industrial Units) Scheme [in short "IPS"] from total income offered for taxation and further contended that the Hon'ble Jurisdictional High Court in the case of *CIT Vs Rasoi Ltd in 335 ITR 438 (Cal HC)*, had considered identical incentive scheme of West Bengal Government and held the said incentive as capital receipt. However, the assessing officer rejected the assessee's application u/s 154 of the Act stating that this is not a mistake apparent from record and further stated that the assessee itself failed to lodge the claim in the return of income filed u/s 139(1) of the Act and also the assessee failed to exercise its rights contained u/s 139(1) of the Act.

3.1. Aggrieved the assessee preferred an appeal before the Id. CIT(A) but again failed to succeed. Similar view was taken by the Id. CIT(A) that, since the issue referred in the application u/s 154 of the Act is not a mistake apparent on record, the said claim, even having merit, cannot be claimed at this stage and cannot be rectified u/s 154 of the Act.

4. At the outset, the Id. Counsel for the assessee submitted that, the issue raised in the instant appeal is squarely covered by the decision of this Tribunal in the case of *Shri Ritum Jain vs. DCIT in ITA No. 466/Kol/2021; order dt. 30/03/2022*, wherein similar claim being made through rectification u/s 154 of the Act has been allowed by the Tribunal, directing the assessing officer to exclude these sales tax subsidy received from the Government from the total income offered by the assessee for taxation. Reliance was also placed on various other decisions and reference made to other details contained in the index paper book containing 83 pages.

Per contra, the Id. D/R vehemently argued supporting the orders of the lower authorities.

5. We have heard rival contentions and perused the record placed before us.

6. The only issue raised before us by the assessee is that, the subsidy received by it as industrial promotion assistance from the State Government of West Bengal was capital in nature but was wrongly included in the income offered to tax. For rectifying this mistake, the assessee filed applications u/s 154 of the Act but both the lower authorities have denied the said claim. Reliance placed on the decision of the Co-ordinate Bench of the Tribunal in the case of *Ritum Jain (supra)* wherein we find that a similar

issue has been adjudicated by this Tribunal deciding in favour of the assessee observing as follows: –

*“4.1. We have heard the rival contentions of the ld. representatives of both the parties and gone through the records. So far as the claim of the assessee on merits is concerned, the ld. DR has been fair enough to admit that as per the settled position of law by the Hon’ble Supreme Court in the case of CIT vs Ponni Sugars & Chemicals Ltd. [2008] 306 ITR 392 / 174 Taxman 87 (SC) and further by the decision of Hon’ble Supreme Court in the case of Balaji Alloys vs CIT [2017] 80 taxmann.com 239 (SC) dated 19.04.2016 and the decision of the Jurisdictional Calcutta High Court in the case of CIT vs Rasoi Limited [2011] 335 ITR 438 (Cal) (HC) dated 19.05.2011, the sales tax subsidy received by the assessee from the Govt. of West Bengal under a scheme of industrial promotion was a capital receipt. She has also fairly admitted that the said issue has already been decided by the Tribunal in the own case of the assessee for the earlier assessment year A.Y. 2013-14 vide order dated 22.10.2020 passed in IT(SS)A No. 36/Kol/2019, wherein, the Tribunal while relying upon the another decision of the Coordinate Bench of the Tribunal in the case of “ACIT vs Shantinath Detergents Pvt. Ltd. in IT(SS)A No. 27 to 32/Kol/2019 order dated 20.03.2020 has decided the aforesaid issue in favour of the assessee. Having the said issue already decided in favour of the assessee in the earlier assessment year i.e. A.Y. 2013-14, it is obvious that for the subsequent assessment year 2014-15, on the same analogy, the said receipt of sales tax subsidy is to be treated as capital receipt.*

*5. So far as the legal issue that the assessee cannot make a fresh claim before the Assessing Officer by way of a rectification application or by way of a modification letter during assessment is concerned, we note that the assessee in this case has not made any fresh claim of deduction etc. before the Assessing Officer. What the assessee has pleaded is that, in fact, the income returned by the assessee did not fall in the definition of income as per the provisions of the Income Tax Act. The said receipt of the assessee was non-taxable at all. It is not a case of making any fresh claim rather it is a plea of inadvertently offering for taxation a capital receipt which was non-taxable at all.*

*The taxation of a capital receipt which did not constitute income of the assessee, in our view would constitute a mistake apparent on record. The Hon’ble Delhi High Court in the case of Vijay Gupta vs Commissioner of Income Tax WP(C) 1572/2013 vide order dated 23<sup>rd</sup> March, 2016 has deliberated upon various case laws and also on the Article 265 of the Constitution of India to hold that no tax can be levied or collected except by the authority of law and that if the assessee has by mistake or inadvertence or on account of ignorance, included in his income any amount which is non-taxable or is not income within the contemplation of law, the assessee may bring the same to the notice of the Assessing Officer, to which, if, the AO is satisfied, he may grant the assessee necessary relief and refund the tax paid in excess. The Hon’ble Delhi High Court has referred to in this respect to the*

decision of the Hon'ble Supreme Court in the case of "CIT vs Shelly Products and another" reported in 261 ITR 367. The Hon'ble Delhi High Court has also referred to CBDT Circular No. 14(XL-35) of 1955 dated 11.04.1955, wherein, the CBDT has directed that the officers of the department must not take advantage of ignorance of an assessee as to his rights and that it is one of their duties to assist a tax payer in every reasonable way, particularly, in the matter of claiming and securing reliefs and that they should take the initiative in guiding a tax payer where proceedings or other particulars before them indicate that some refund or relief is due to him. The relevant part of the order of the Hon'ble Delhi High Court in the case of Vijay Gupta vs CIT (supra) is reproduced as under:

"17. Article 265 of the Constitution of India reads that "No tax shall be levied or collected except by the authority of law." In terms of the Article 265 of the Constitution, tax can be levied only if it is authorized by law. The taxing authority cannot collect or retain tax that is not authorized. Any retention of tax collected, which is not otherwise payable, would be illegal and unconstitutional.

18. The Supreme Court of India in CIT v. Shelly Products and another 261 ITR 367 held that if the assessee has by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income-tax or is not income within the contemplation of law, the assessee may bring the same to the notice of the assessing officer, which if satisfied, may grant the assessee necessary relief and refund the tax paid in excess, if any.

19. In CIT v. Bharat General Reinsurance Co. Ltd. 81 ITR 303 (Del), this court held that merely because the assessee wrongly included the income in its return for a particular year, it cannot confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year.

20. The Bombay High Court in Balmukund Acharyavs DCIT, CIT and UOI 310 ITR 310 held that Tax can be collected only as provided under the Act. If any assessee, under a mistake, misconception or on not being properly instructed is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected.

21. The Bombay High Court in Nirmala L. Mehta v. A. Balasubramaniam, C.I.T. (2004) 269 ITR 1 held that there cannot be any estoppel against the statute. Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law.

22. Circular No. 14(XL-35) of 1955, dated 11.4.1955, issued by the Central Board of Direct Taxes and relied upon by the Petitioner reads as under:

"Officers of the department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a tax payer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a tax payer where proceedings or other particulars before them indicate that some refund or relief is due to him. This

*attitude would, in the long run, benefit the department, for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessee on whom it is imposed by law, officers should –*

*(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;*

*(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs".*

*23. A reading of the circular shows that a duty is cast upon the assessing officer to assist and aid the assessee in the matter of taxation. They are obliged to advise the assessee and guide them and not to take advantage of any error or mistake committed by the assessee or of their ignorance. The function of the Assessing Officer is to administer the statute with solicitude for public exchequer with an inbuilt idea of fairness to taxpayers."*

*6. In view of the above discussion and in the light of Article 265 of the Constitution of India and in the light of various decisions of the Hon'ble Supreme Court and other High Courts of the country, in our view, the lower authorities failed to exercise jurisdiction vested in them under the jurisdiction of section 154 of the Act.*

*7. Even otherwise the bar, if any, relating to entertain a fresh claim is on the Assessing Officer. However, there is no bar on the higher authorities and especially upon this Tribunal in exercising its power u/s 254 of the Income Tax Act to entertain or to deal not merely with additional ground which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. Reliance in this respect can be placed on the decision of the Hon'ble Bombay High Court in the case of CIT vs Pruthvi Brokers and Shareholders Pvt. Ltd. (2012) 349 ITR 336 (Bom). Further, reliance in this respect can be placed on the decision of Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. vs CIT 229 ITR 383 and the full bench of the Hon'ble Bombay High Court in the case of Ahmedabad Electricity Co. Ltd. vs CIT (1993) 199 ITR 351.*

*In view of the above discussion, we allow the appeal and direct the Assessing Officer to exclude the income from sales tax subsidy received from Govt. of West Bengal which has been inadvertently offered by the assessee for taxation and grant the appropriate relief / refund of the assessee.*

*8. In the result, the captioned appeal of the assessee is allowed."*

*7. From a perusal of the above finding given by the Tribunal (supra), we find that it is squarely applicable on the facts of the instant appeal and the*

Id. D/R is unable to place any binding precedent in its favour, we, therefore respectfully following the decision taken by this Tribunal in the case of *Ritum Jain (supra)*, reverse the finding of the Id. CIT(A) and allow this appeal of the assessee.

8. In the result, appeal of the assessee is allowed.

**Order pronounced in the Court on 22<sup>nd</sup> November, 2022 at Kolkata.**

*Sd/-*

**(SANJAY GARG)  
JUDICIAL MEMBER**

*Sd/-*

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 22/11/2022

*\*SC S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, **आयकर अपीलीय अधिकरण न्यायपीठ**, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**