

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

**BEFORE,
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1921/Del/2020
(ASSESSMENT YEAR 2014-15)**

DCIT Central Circle-31, Room No. 343, E-2, ARA centre, Jhandewalan Extension, New Delhi	Vs.	Maral Overseas Ltd. Maral Sarovar, NH-3, Nimrani, Khal Bujurg, West Nirmar, Niwari, Madhya Pradesh PAN-AACCM0230B
(Appellant)		(Respondent)

**ITA No.1922/Del/2020
(ASSESSMENT YEAR 2015-16)**

DCIT Central Circle-31, Room No. 343, E-2, ARA centre, Jhandewalan Extension, New Delhi	Vs.	Maral Overseas Ltd. Maral Sarovar, NH-3, Nimrani, Khal Bujurg, West Nirmar, Niwari, Madhya Pradesh PAN-AACCM0230B
(Appellant)		(Respondent)

Appellant by	St. Satyajeet Goel, CA
Respondent by	Ms. Sarita Kumari, CIT-DR

Date of Hearing	11/05/2023
Date of Pronouncement	17/05/2023

ORDER

PER YOGESH KUMAR U.S., JM:

These two appeals by Revenue filed against the order of Learned Commissioner of Income Tax (Appeals)-30, New Delhi [Ld. CIT(A)", for short], dated 16/09/2020 and 17/09/2020 respectively for Assessment Years 2014-15 & 2015-16 respectively.

2. The grounds taken in this appeal are as under:

ITA No.1921/Del/2020 (A Y 2014-15)

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 4,28,27,160/- (made on account of disallowance of claim of interest subsidy of Rs. 4,28,27,160/- under TUFS as capital receipt,) without appreciating the detailed reasons given in the assessment order. On similar issue in the case of M/s Nitin Spinners Ltd., Department has filed SLP in Hon'ble Supreme Court.

2. That the order of Ld.CIT(A) is erroneous and is not tenable on facts and in law.

3. That the grounds of appeal are without prejudice to each other."

ITA No.1922/Del/2020 (A Y 2015-16)

“1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 5,65,04,779/- (made on account of disallowance of claim of interest subsidy of Rs. 5,65,04,779/- under TUFs as capital receipt,) without appreciating the detailed reasons given in the assessment order. On similar issue in the case of M/s Nitin Spinners Ltd., Department has filed SLP in Hon’ble Supreme Court.

2. That the order of Ld.CIT (A) is erroneous and is not tenable on facts and in law.

3. That the grounds of appeal are without prejudice to each other.”

ITA No.1921/Del/2020 (ASSESSMENT YEAR 2014-15)

3. Since the issue in hand in the both Appeals are identical. The facts of Assessment Year 2014-15 are considered for the sake of convenience. The return was filed by the assessee declaring NIL income, the case was selected for scrutiny under CASS. Subsequently, Action u/s 132 of the Act was carried out in Bilwara Group and the premises of the assessee were also covered, during the course of the search various books of accounts/documents were found and seized and the statement of various persons were recorded. Assessment order came to be passed by making addition of Rs. 4,28,27,160/- wherein it is held that TUF subsidy is revenue receipt and added back to the income of the assessee. Further, since a sum of Rs. 81,00,08/- being interest on income tax refund has not been made entry in the Assessee’s books of account, the same

has been added to the income of the assessee and also made disallowance u/s 14A to the tune of Rs. 1,24,023/-. The assessee preferred an appeal before the CIT(A), the Ld.CIT(A) vide order dated 06/09/2020 deleted an addition of Rs. 4,28,27,160/- under TUFs as capital receipt. Aggrieved by the order dated 16/09/2020, the department preferred the present appeal on the grounds mentioned above.

4. Aggrieved by the order dated 16/09/2020 the Department has preferred the present Appeal on the grounds mentioned above.

5. The Ld. DR relied on the orders of the A.O. and submitted that the order of the CIT(A) is erroneous and deserves to be set aside.

6. The Ld. Counsel for the assessee vehemently submitted that the Ld.CIT(A) has elaborately discussed the matter and by relying on the decision of Hon'ble High Court of Rajasthan in the case of PCIT Vs. Nitin Spinners Ltd. 2020 (2016) Taxman.com 26 Rajasthan has rightly held that the subsidy and incentive received under TUFs is excludible from book profit under 115JB of the Act. The Ld. Counsel further submitted that the said judgment of the Hon'ble Supreme Court has been challenged by the Department before the Hon'ble Supreme Court which has been dismissed by the Hon'ble Supreme Court in SLP (Civil) Dairy No. (S) 17956 of 2020 reported in (2021) 130 Taxman.com 402 (S.C.). Therefore, submitted that the issue involved in the present Appeal squarely covered by the judgments referred above and sought for dismissal of the Appeal of the Revenue.

7. We have heard both the parties and perused the material available on record. During the year under consideration, the assessee received interest subsidy amounting to Rs. 4,82,27,160/- by virtue of technology up-gradation under scheme TUFs, the receipts have been accounted for the deduction from the interest expenses in the books of accounts and accordingly presented in the profit and loss account for the year under consideration.

The said TUFs subsidy is granted in order to encourage the up-gradation of technology and size so as to meet the global challenges, the Ministry of Textiles, Government of India, had launched the Technology Upgradation Fund ('TUF') Scheme. The object of the government in bringing out the said scheme is up gradation of technology in the textile industry, which is also revealed from the following paragraphs of the scheme:

“The Indian textile industry occupies a unique position in the Indian economy in terms of its contribution to industrial production, employment and exports. In spite of a strong fiber and production base, for various historical reasons, this industry suffers from severe technology obsolescence and lack of economics of scale

Given the significance of this industry to the overall health of the Indian economy, its employment potential and the huge historical backlog of technology up gradation, particularly in the context of the liberalization of the national industry and trade policy and globalization of textile trade, it has been emphasized by experts that in order to sustain and improve its competitiveness and overall long term viability, it is essential for the textile industry to have access to timely and adequate capital at internationally comparable rates of interest in order to upgrade its technology level.”

From the above, it is seen that TUFSS subsidy has been granted to improve technology up gradation in the context of liberalization of the national industry and trade policy and globalization of textile trade in order to improve its competitiveness and over all long term viability. Hence, the purpose of the said subsidy is to improve technology up gradation, economics of scale including employment.

8. The Ld.CIT(A) while granting the relief to the assessee has relying on judicial pronouncements including the judgment of Rajasthan High Court in the case of Nitin Spinners Ltd. (Supra). The Ld.CIT(A) has observed as under:-

“8. Ground No. 1: The appellant has referred to objects of Technology Up gradation Fund Scheme (TUFSS) to support of its claim of exemption with regard to subsidies/incentive received there under. Further, the appellant has relied upon various decision of High Court and Tribunal including decision of Hon’ble Rajasthan High Court in the case of PCIT v. Nitin Spinners Ltd. [2020] 116 taxmann.com 26 (Rajasthan).

8.1 I have gone through the assessment order and submission filed by the appellant. It is seen that assessing officer has not assigned any specific reasons for rejecting the claim of the appellant. To understand the character and taxability of subsidies under the provisions of the Income tax Act, 1961, it is important to understand the objects of scheme under which subsidy has been granted. The legal position to this effect stems from concurrent decisions of Supreme Court right from Sahney Steel & Press Works Ltd. v. CIT [1997] 94 Taxman 368/228 ITR 253 (SC) to CIT v. Ponni Sugars & Chemicals Ltd. [2008] 174 Taxman 87 /306 ITR 392(SC)

and to the latest decision in the case of *CIT(A) v. Chaphalkar Brothers Pune / [2018] 400 ITR 279 (SC)* wherein the *PURPOSE TEST* was held to be ultimate test to decide the character of subsidy in the hands of the assessee. The relevant finding in the case of *CIT v. Chaphalkar Brothers*:

“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. ”

On the touchstone of principle laid down by Supreme Court, the purpose and object of the TUFs scheme is analyzed on the basis of scheme document enclosed in the paper book:

<i>Technology up gradation Fund Scheme</i>	<i>Provided by Central Government to textile industry Fund to encourage investment in upgrading technology. The subsidy is in the borrowings at low cost made available to manufactures. The purpose of subsidy is to boost textile industry which in turn will boost employment potential in the country and uplift overall health of Indian economy</i>
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8.3. From the above analysis, it is crystal clear that objects of these schemes is to achieve larger goal of capital investment, employment generation and improving status of India economy and not to compensate the loss of income of the assessee. It goes without saying that any subsidy/incentive which is directed toward compensating the income of the assessee is revenue receipt.

However, where the object is to promote and encourage infusion of capital and to boost the exports of the country as whole, the subsidy partakes the character of capital receipt which is not chargeable to tax under the provisions of Income tax Act, 1961.

8.4. The latest decision of Hon Tale Rajasthan High Court in the case of Nitin Spinners Ltd. (Supra), as relied upon by the appellant, fully supports of the case as the same deals with all same three subsidies as discussed above and Hon'ble High as upheld the order of ITAT wherein the claim of exemption was accepted after in depth analysis of objects of the respective schemes. Further, the decision of Rajasthan High Court in the case of Shree Cement Ltd.(ITA 27/2012 dated 22/08/2017)wherein also the subsidy under RIPS was held to be capital receipt on the basis of principle laid down in the case of Sahney Steel & Press Works Ltd. v. CIT(SC) and CIT v. Ponni Sugars & Chemicals Ltd(SC). The landmark decision of Jammu and Kashmir High Court in the case of Shree Balaji Alloys 333 ITR 335 has also been upheld by Apex Court as reported in [2016] 287 CTR 459 (SC).

8.5. In view of unequivocal principle laid down by Supreme Court and find recorded as above, I have no hesitation in holding that claim of exemptor respect of subsidies received under TUFs withstands the Purpose test : demands acceptance. Accordingly, I hereby direct the assessing officer to the claim in respect of TUFs subsidy of Rs. 4,28,27,160/-. The grounds raised in this behalf are allowed.

9. It is pertinent to note that the judgment of the Hon'ble Rajasthan High Court in the case of Nitin Spinners Ltd. (supra) has been upheld by the Hon'ble Supreme Court in SLP (Civil) Diary No. (S) 17956 of 2020 vide order dated 31/08/2021. Thus, the issue in hand is no more res-integra. Following the

ratio laid down by the Hon'ble Supreme Court above. We find no merit in the grounds of Appeal of the assessee accordingly both the Appeal in ITA No. 1921/Del/2020 and 1922/Del/2022 are dismissed.

10. In the result, the appeal of the Assessee in ITA No. 1921/Del/2020 is dismissed

ITA No.1922/Del/2020 (ASSESSMENT YEAR 2015-16)

11. Both the parties have agreed that the facts of the Assessment Year 2014-15 are similar to that of Assessment Year 2015-16 and the Reverence has raised the identical grounds of Appeal in the present Appeal as well. In view of dismissing the Appeal filed by the Revenue for the Assessment Year 2014-15 in ITA No. 1921/Del/2020, the same order mutatis mutandis applies to the Assessment Year 2015-16.

12. In the result, Appeal in ITA No. 1922/Del/2020 (A.Y 2015-16) filed by the Revenue is dismissed.

Order pronounced in open Court on 17th May, 2023

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Dated: 17/05/2023**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

R.N. Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT, NEW DELHI