

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 1923/Del/2020 : Asstt. Year: 2014-15
ITA No. 1924/Del/2020 : Asstt. Year: 2015-16**

DCIT, Central Circle-31, New Delhi-110055	Vs.	BSL Ltd., 26, Industrial Area, PO Box No. 17, Gandhi Nagar, Bhilwara, Rajasthan-311001
(APPELLANT)		(RESPONDENT)
PAN No. AABCB0639G		

**Assessee by : None
Revenue by : Sh. Kanv Bali, Sr. DR**

Date of Hearing: 27.02.2023	Date of Pronouncement: 23.05.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-23, New Delhi dated 27.11.2019.

2. Since, the issue involved in both the appeals are similar, they were heard together and being adjudicated by a common order.

3. In 1923/Del/2020, the Revenue has raised the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the Id. CIT(A) has erred in law and on facts in deleting the addition of Rs.3,18,78,827/- (made on account of disallowance of claim of interest subsidy of Rs.3,18,78,827/- under TUFS as capital receipt),

without appreciating the detailed reasons given in the assessment order and without appreciating the fact that the matter is sub judice in assessee own case for A.Y. 2008-09. On similar issue in the case of M/s Nitin Spinners Ltd., Department has filed SLP in Hon'ble Supreme Court."

4. The matter stands adjudicated by the order of the Co-ordinate Bench of ITAT in assessee's own case in ITA No. 2105/KOL/2014 vide order dated 14.02.2020. For the sake of ready reference, the entire order is reproduced as under:

*IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA
Before Shri P.M. Jagtap, Vice-President
and Shri Satbeer Singh Godara, Judicial Member
I.T.A. No. 2105/KOL/2014
Assessment Year: 2008-2009*

*Deputy Commissioner of Income
Tax,.....Appellant
Circle-10, Kolkata,
Aayakar Bhawan,
3rd Floor,
P-7, Chowringhee Square,
Kolkata-700069*

-Vs.-

*M/s.BSL Limited.Respondent 151,
Sarat Bose Road,
Kolkata-700020
[PAN:AACB0639G]*

Appearances by:

Shri S.D. Verma, Advocate & Shri Sanjeev Kadel, FCA, for the Appellant

Shri Dhrubajyoti Roy, JCIT, for the Respondent

Date of concluding the hearing : February 10, 2020

Date of pronouncing the order : February 14, 2020

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-XII, Kolkata dated 01.09.2014 and in the solitary ground raised therein, the Revenue has challenged the action of the Id. CJT(Appeals) in directing the Assessing Officer to treat the interest subsidy received by the assessee as capital receipt not chargeable to tax.

2. The assessee in the present case is a Company, which filed its return of Income for the year under consideration on 25.09.2009 declaring a loss of Rs.10,58,28,082/-. In the assessment originally ITA No. 2105/KOL/2014 Assessment Year: 2008-2009 M/s. BSL Limited completed under section 143(3) vide an order dated 01.09.2010, the total loss of the assessee was determined by the Assessing Officer at Rs.8,96,39,082/-. The said assessment was subsequently set aside by the Id. CIT vide an order dated 08.12.2010 passed under section 263 with a direction to the Assessing Officer to complete the assessment afresh on certain issues as pointed out in the order under section 263. In compliance with the order of the Id. CIT passed under section 263, a fresh assessment was made by the Assessing Officer vide an order dated 22.12.2011 determining the total loss of the assessee-company at Rs.7,13,55,082/- after making addition of Rs.1,82,84,000/- on account of the interest income.

3. *Against the order passed by the Assessing Officer under section 143(3) read with section 263, an appeal was filed by the assessee before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), additional ground was raised by the assessee claiming that the interest subsidy of Rs.3,04,53,559/- received by it under Technology Upgradation Fund Scheme (TUFS in short) during the year under consideration was liable to be treated as capital receipt not chargeable to tax instead of revenue receipt chargeable to tax as offered by the assessee in its return of income. The said additional ground along with the submissions made by the assessee in support of its case on the issue raised therein was forwarded by the Id. CIT(Appeals) to the Assessing Officer seeking the latter's remand report. In the remand report submitted to the Id. CIT(Appeals), the Assessing Officer strongly objected to the admission of the additional ground raised by the assessee by submitting that the issue raised therein was not the subject matter of either the original assessment made under section 143(3) or even the fresh assessment made under section 143(3) read with section 263. The Id. CIT(Appeals), however, did not find the objection raised by the Assessing Officer to be sustainable and after discussing this aspect in detail in the light of various judicial pronouncements, he admitted the ITA No. 2105/KOL/2014 Assessment Year: 2008-2009 M/s. BSL Limited 3 additional ground raised by the assessee. In the remand report, the claim of the assessee as made in the additional ground for treating the interest subsidy received under TUFS as capital receipt was also challenged by the Assessing Officer by relying mainly on the decision of the Hon'ble Supreme Court in the case of Sahney Steel & Press Works Limited [228 ITR 253]. The Id. CIT(Appeals), however, found that the issue raised by the assessee-company in the additional ground was squarely covered in favour of the assessee on merit by the decision of the Kolkata Bench of ITAT in the case of DCIT -vs- M/s. Gloster Jute Mills Limited (ITA No. 766/KOL/2010 dated 02.07.2014),*

wherein the interest subsidy received by the assessee under the same TUFS was held to be capital receipt by the Tribunal after taking into consideration the decision of the Hon'ble Supreme Court in the case of Sahney Steel & Press Works Limited (supra). He accordingly followed the said decision of the Tribunal and directed the Assessing Officer to treat the interest subsidy received by the assessee company under the TUFS as capital receipt not chargeable to tax. Aggrieved by the order of the Id. CIT(Appeals) giving relief to the assessee on this issue, an appeal was preferred by the Revenue before the Tribunal. The said appeal was dismissed by the Tribunal vide its appellate order dated September 18, 2017 by following the decision rendered by the Coordinate Bench of this Tribunal in the case of M/s. Gloster Jute Mills Limited (ITA No. 766/KOL/2010 dated 02.07.2014), wherein a similar issue relating to the assessee's claim of treating the interest subsidy received under TUFS as capital receipt not chargeable to tax had been allowed by the Tribunal. The said order of the Tribunal dated September 18, 2017 was challenged by the Revenue in the appeal filed before the Hon'ble Calcutta High Court and Their Lordships of Hon'ble Calcutta High Court as per the judgment delivered on 27.03.2019 in I.T.A. No. 15 of 2019 set aside the order of the Tribunal and remanded the matter back to the Tribunal by observing as under:-

"We have examined the impugned order of the Tribunal. The Tribunal has simply referred to the subsidy scheme without specifying the scope, purport or ITA No. 2105/KOL/2014 Assessment Year: 2008-2009 M/s. BSL Limited & the details of it. Simply because the subsidy scheme has been declared by the Tribunal to be capital receipt in the case of other assessees, it pronounced the decision in this case that it was to be treated as such.

In our view, that was not the correct approach. The subsidy scheme had to be analysed threadbare. The question whether the subsidy

incentive was being utilized for the purpose of meeting the interest liability of the company on loans and advances taken by it to set up its plant and machinery had to be investigated and a firm conclusion ought to have been arrived at. Only if it was so utilized, possibly, the subsidy incentive could be described as a capital receipt. Otherwise it had to be treated as a revenue receipt.

In those circumstances, we remand the matter back to the Tribunal to decide this particular issue upon hearing the parties and by a reasoned order within three months from the date of communication of this order”.

Hon’ble High Court of Calcutta thus remanded the matter back to the Tribunal with a direction to decide the issue involved in the assessee’s case afresh after examining/ analysing the concerned subsidy scheme and utilization of subsidy incentive for the specific purpose.

4. As per the order/direction of the Hon’ble Calcutta High Court, the case has been fixed for hearing afresh and arguments of both the sides have been heard. It is observed that the interest subsidy in question was received by the assessee under Technology Upgradation Fund Scheme (TUFS in short) of the Ministry of Textiles and the objective and scope of the said Scheme as well as the eligibility criteria for assistance as given in the Resolution dated 31.03.1999 published in the Official Gazette of India is extracted below:-

“Objective:-

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 fibre and production base, for various historical reasons, this industry suffers from severe technological obsolescence and lack of economies of scale. While

relatively high cost of state-of-the-art technology and structural anomalies in the industry have been major contributory factors, ITA No. 2105/KOL/2014 Assessment Year: 2008-2009 M/s. BSL Limited 5 perhaps the single most important factor inhibiting technology upgradation has been the relatively high cost of capital, even in real terms, in India, especially for an industry usually squeezed for margins. Given the significance of this industry to the overall health of the Indian economy, its employment potential and the huge historical backlog of technology upgradation, particularly in the context of the liberalisation of the national industrial and trade policy and globalisation of textile track, it has been emphasised 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.

In the light of the foregoing, it has been felt necessary to make operational a focused and time-bound Technology Upgradation Fund Scheme(TUFS) which would provide a focal point for modernization efforts through technology upgradation in the industry. The main feature of the TUF Scheme would be a five percent reimbursement on the interest actually charged by the identified financial institutions on the sanctioned projects.

Resolution:

It is, therefore, resolved that a Technology Upgradation Fund Scheme be made operational for the textile, jute and cotton ginning & pressing industries w.e.f. 1.4.1999 for a period of 5 years i.e., up to 31st March 2004, which was subsequently extended up to 31.3.2007. The scheme will provide a reimbursement of five percentage points on the interest charged by the lending agency on a project of technology upgradation in conformity with this resolution.

With effect from 1st January, 2002, an option has been provided to the Small Scale Textile and Jute Industries to avail of either 12 percent Credit Linked Capital Subsidy (CLCS-TUFS) or 5 percent interest reimbursement under Technology Upgradation Fund Scheme. The rate of 12 percent has been increased to 15 percent w.e.f. 13.01.2005.

With effect from 6th November, 2003, an additional option has been provided to the powerloom units to avail of 20% capital subsidy under TUFS in lieu of 5% interest reimbursement / 15% CLCS-TUFS on investment in TUF compatible specified machinery subject to a capital ceiling of Rs. 60 lakh and ceiling on capital subsidy is Rs.12 lakh. The capital ceiling for machinery has been increased from Rs.60 lakh to Rs.1 crore and the ceiling on capital subsidy has also been increased from Rs.12 lakh to Rs.20 lakh w.e.f. 13.01.2005.

An additional incentive of 10% capital subsidy over and above the 5% interest subsidy has been provided for the specified textile processing machinery during a period of one year from 20th April, 2005 to 19th April, 2006, which was subsequently extended upto 31.03.2007, i.e., co-terminus with TUFS.

ITA No. 2105/KOL/2014 Assessment Year: 2008-2009 M/s. BSL Limited 6 The scope of the scheme, eligibility criteria and operational parameters are defined below:

1. SCOPE OF THE SCHEME The following will be covered under the Technology Upgradation Fund Scheme:-

- a) Cotton ginning and pressing.*
- b) Textile industry covering:-*
 - (i) Silk reeling and twisting.*
 - (ii) Wool scouring and combing.*

- (iii) *Synthetic filament yam texturising, crimping and twisting.*
 - (iv) *Spinning.*
 - (v) *Viscose Staple Fibre (VSF) and Viscose Filament Yarn.(VFY).*
 - (vi) *Weaving, knitting including non-wovens, fabric embroidery and technical textiles.*
 - (vii) *Garment/made-up manufacturing*
 - (viii) *Processing of fibres, yams, fabrics, garments and made-ups.*
- c) *Jute industry.*

II. ELIGIBILITY CRITERIA FOR ASSISTANCE

1. DEFINITION OF TECHNOLOGY UPGRADATION Technology Upgradation would ordinarily mean induction of state-of-the-art or near- state-of-the-art technology. But in the widely varying mosaic of technology obtaining in the Indian textile industry, at least a significant step up from the present technology level to a substantially higher one for such trailing segments would be essential. Accordingly, technology levels are benchmarked in terms of specified machinery for each sector of the textile industry. Machinery with technology levels lower than that specified will not be permitted for funding under the TUF Scheme.

2. ELIGIBLE MACHINERY Installation of the following types of machinery in a new unit or in an existing unit by way of replacement of existing machinery and / or expansion will be eligible for coverage under TUF scheme:

2.1 Cotton Ginning and Pressing –

2.2 Spinning/Silk Reeling & Twisting/ Wool Scouring & Combing/Synthetic filament yam Texturising, Crimping & Twisting

2.3. Manufacturing of viscose filament yarn and viscose staple fibre

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2.4. Weaving / Knitting including non-wovens and Technical Textiles-

_ 2.5 Garment / Made-up manufacturing ITA No. 2105/KOL/2014

Assessment Year: 2008-2009 M/s. BSL Limited 7 2.6 Processing of

fibre / Yarn / Fabrics / Garments / made-ups 2.7 Jute industry 2.8

Energy saving & process control equipments for various sectors 2.9

Machinery eligible under 20% CLCS-TUFS for powerloom sector 2.10.

Machinery eligible under 10% capital subsidy for processing sector

Note Vide circular No.2 (2004-2005 series) dated 27th May, 2004,

the machinery eligible for one segment has been made eligible for

other segments/activity also unless its eligibility is specifically

restricted for a particular segment.

1. GENERAL ELIGIBILITY CONDITIONS 3.1 TYPE OF UNITS :

(1) Existing unit with or without expansion and new units.

(2) Existing units can modernise and / or expand with the state-of-the-art technology.

(3) New units must set up their entire facilities only with the appropriate eligible technology.

(4) A unit can undertake one or more activities listed at ISCOPE OF THE SCHEME hereinbefore under the scheme. However, multiple activities can be undertaken only in an integral manner, i.e., by way of forward or backward integration. It is, however, clarified that weaving / knitting and garment manufacturing or weaving / knitting and processing or garment manufacturing and processing will be considered as integral activities.

(5) Textile / Jute units with 100% foreign equity.

3.2 TYPE OF TEXTILE MACHINERY ELIGIBLE :

(1) Under the TUF Scheme, generally only new machinery will be permitted.

(2) However, the following imported second hand machinery are also eligible under TUFs:

a) Auto-coners upto 5 years' vintage with a residual life of minimum 10 years;

b) Air jet, Projectile, Rapier and Waterjet shuttleless looms fitted with or without electronic jacquard / electronic dobbie ITA No. 2105/KOL/2014 Assessment Year: 2008-2009 M/s. BSL Limited 8 and with or without high speed direct beam warper with creel and/or sectional warping machine with auto stop and tension control of upto 10 years' vintage and with a residual life of minimum 10 years. However, the vintage period of 10 years has been increased to 15 years with effect from 22 n d February, 2005".

5. If the relevant TUF Scheme is analyzed with particular reference to its objective and scope as well as the eligibility criteria for assistance, it becomes amply clear that the subsidy was given to the eligible Textile Unit in order to upgrade its technology level so as to sustain and improve its competitiveness and overall long-term viability. Accordingly, the Scheme was framed to make operational a focused and time-bound Technology Upgradation, which would provide a focal point for modernisation efforts through technology upgradation in the industry. The main feature of the TUF Scheme was a five percent reimbursement on the interest actually charged by the identified financial institutions on the sanctioned projects. It is pertinent to note that options were also provided in the Scheme to the Small Scale Textile and Jute Industries as well as to the Powerloom Units to avail capital subsidy to the extent of certain

fixed percentage of the investment in TUF compatible specified machinery. As per the definition of "Technology Upgradation" given in the Scheme, what it meant was induction of state-of-the-art or near-state-of-the-art technology and what it envisaged was at least a significant step up from the present technology level to a substantially higher one for such trailing segments. Accordingly, technology levels were benchmarked in terms of specified machinery for each sector of the Textile Industry. It is thus clear that even though the subsidy in question under TUF Scheme was given in the form of reimbursement of the interest, the objective of giving the said subsidy was to upgrade its technology level by the eligible unit by induction of state-of-the-art or near-state-of-the-art technology and such technology level was benchmarked in terms of specified machinery for each sector of the Textile Industry. The purpose of giving incentive in the form of interest subsidy under the TUF Scheme thus was ITA No. 2105/KOL/2014 Assessment Year: 2008-2009 M/s. BSL Limited to encourage capital investment by the eligible unit in the form of specified machinery in order to induct state-of-the-art or near-state-of-the-art technology or at least a significant step up from the present technology level to a substantially higher one. In our opinion, going by this purpose of the interest subsidy as specified under the TUF Scheme, the amount of interest subsidy in question received by the assessee was a receipt of capital in nature.

6. As regards the issue of utilization of the amount of incentive in question for the purpose of meeting the interest liability of the Company on loans and advances taken by it to set up its plant and machinery, which the Hon'ble Calcutta High Court has directed us to examine or investigate before arriving at any conclusion as regards the nature of the interest subsidy whether capital or revenue, it is observed that neither the Assessing Officer nor the Id. CIT(Appeals) has given any finding on this aspect. In this regard, the Id. D.R. has

submitted that this matter requires verification and an opportunity may be given to the Assessing Officer to verify the same from the relevant record. We are inclined to accept this contention of the Id. D.R. and since the Id. Counsel for the assessee has also not raised any objection in this regard, we restore this issue to the file of the Assessing Officer for the limited purpose of verifying the issue of utilisation of amount of subsidy in question by the assessee. If it is found by the Assessing Officer on such verification that the subsidy amount in question was utilized by the assessee for the purpose of meeting the interest liability on loans and advances taken by it to set up its plant and machinery, the subsidy incentive could be considered as a capital receipt not chargeable to tax. Otherwise, as observed by the Hon'ble Jurisdictional High Court, it has to be treated as a revenue receipt."

5. In the result, the appeals of the Revenue are treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 23/05/2023.

Sd/-

**(Yogesh Kumar US)
Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 23/05/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR