IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No. 594/Asr/2019
Assessment Year: 2016-17

The ACIT Central Circle-1, Jammu	Gravita Metal Inc. 25 51 COP, Industrial Estate, Kathua, Jammu and Kashmir-190001 PAN: AAMFM1264G
(Appellant)	**(Respondent)**

I.T.A. No. 587/Asr/2019
Assessment Year: 2016-17

Gravita Metal Inc. 25 51 COP, Industrial Estate, Kathua, Jammu and Kashmir-190001 PAN: AAMFM1264G	The ITO, Ward-1(4), Kathua
(Appellant)	**(Respondent)**

Appellant by : Shri. P.C. Parwal, CA

Respondent by: Shri Rohit Mehra, CIT DR

Date of Hearing : 29/05/2023
Date of Pronouncement : 15/06/2023

ORDER

Per Dr. M. L. Meena, AM:

The Captioned cross appeals are filed by the Revenue and the Assessee against the order dated 17.05.2019 passed by the Ld. Commissioner of Income Tax, Jammu, [hereinafter referred to as CIT(A)]

arising out of the Assessment Order dated 21.12.2018, passed by the Income Tax Officer, Ward- Kathua, in respect of the Assessment Year 2016-17, challenging therein the allowing of the 100% of the capital receipt in view of the amended section 2(24)(xviii) of the IT Act, 1961 by raising following grounds of appeals respectively.

Grounds of ITA No. 594/Asr/2019

1. *Whether in the facts and circumstances of the case, the Ld. CIT(A) was right in allowing the 100% of the capital receipt when the assessee himself claimed entire amount of Rs.5,15,25,900/- as refundable from Excise Department.*
2. *The assessee is following mercantile system of accounting and income is to be taxed on accrual basis and the assessee has passed this entry in the books of accounts maintained during the year under consideration.*
3. *Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) was in error in not appreciating (that as per) the amended section 2(24)(xviii) of the IT Act, 1961 any assistance in the form of subsidy, grant, etc. provided by the Government or any other authority is to be considered as income/revenue receipt taxed accordingly.*

Grounds of ITA No. 587/Asr/2019

1. *In the facts and circumstances of the case and in law, Ld. CIT(A) has erred in, confirming the action of the Ld. Assessing Officer, in making addition of Rs. 1,85,49,324/- under section 2(24)(xviii) of the Income Tax Act, 1961, being 36% of Excise Duty Exemption availed by the assessee firm. The action of the Ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting entire such addition, made by Ld. AO and, confirmed by the Ld. CIT(A).*
2. *The assessee firm craves its rights to add, amend or alter any of the grounds on or before the hearing.*

Since, there is a sole issue of taxability of Excise Duty refund in view of notification and the amended section 2(24)(xviii) of the IT Act, 1961, both the cross appeals are heard together and adjudicated simultaneously for

the sake of convenience and brevity. First, we are taking up department appeal in ITA No. 594/Asr/2019.

2. Briefly, the facts as per record are that the assessee firm is engaged in the business of manufacturing and recycling of used lead acid battery for supply of pure/refined/unrefined lead ignots, lead alloys to cable and battery manufacturers of India. For the year under consideration, it has filed the return on 12.10.2016 at Nil income. The assessee firm set up its manufacturing unit in Kathua, Jammu & Kashmir on 28.06.2005 to avail the benefit of New Industrial Policy launched for the state of Jammu & Kashmir launch. The Ministry of Commerce & Industry vide Office Memorandum dt. 14.06.2002 (PB 30-32) has provided New Industrial Policy for the state of Jammu & Kashmir in order to accelerate industrial development of the state and to boost investor confidence, as per which new industrial units are entitled to 100% excise duty exemption for a period of 10 years from the date of commencement of commercial production. Accordingly, the assessee firm was being entitled for exemption from payment of excise duty on the goods manufactured by it claimed 100% exemption and filed returned income at NIL.

2.1 In view of insertion of clause (xviii) to section 2(24) of the Act introduced by Finance Act, 2015, the AO held that contention of assessee that this was just a notional entry as explained vide letter dt. 14.12.2018 (PB 25-29) is not relevant. Assessee is following mercantile system of accounting and income is to be taxed on accrual basis. Assessee has passed the entry in books of accounts and is thus liable to be taxed. Hence, the amount of Rs.5,15,25,900/- claimed as capital receipt exempt u/s 10 of the Act is taxed as revenue receipt in view of section 2(24)(xviii) of the Act and accordingly added to the income of assessee.

3. The assesse being aggrieved with the Assessment Order, went in appeal before the Ld. CIT(A) who has granted part relief to the assesse by observing as under:

> *4.7. I am also of the considered opinion that the first appellate authority ought to consider the issue on merits. Hon'ble Madras High Court, in the case of* **CIT** *Vs Indian* **Express (Madurai) Pvt. Ltd. [1983)140 ITR 705 (Madras),** *observed that unlike a law suit in civil appeals, in tax litigation, it cannot be treated as a "lis" between two rival parties but the job of the Assessing Officer is to arrive at the correct taxable income. In view of the aforementioned discussion, the income becomes taxable on the footing of accrual only when the right to receive the income becomes vested in the assessee. As mentioned in para above, Hon'ble Supreme Court in* **E.D.Sassoon & Co. Ltd.(Supra)** *held that if the assessee acquires a right to receive the income, the income is said to have accrued to him, though, it may be received later on. The basic concept is that he must have acquired a right to receive the income. In other words, there must be a debt owed to him by somebody. Unless and until a debt is created in favour of the assessee by somebody, it cannot be said that the assessee has acquired a right to receive the income or the income has accrued to him. Similarly, Hon'ble Supreme Court in the case of Excel* **Industries Ltd.(Supra)** *has held that an income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then it can be said that for the purposes of taxability said income is not hypothetical and it has really accrued to the assessee. In the present case, the liability of the Excise Deptt. is governed in the year under consideration by Notification No. 19/2008 and only 36% exemption was available vide the said notification. From the assessment order and the audited accounts produced by the appellant, it is crystal clear that assessee collected Rs.5,55,66,396/- by way of Excise Duty on sales from its customers and CENVAT on purchases was Rs.40,40,497/-. The Assessing Officer has taxed entire amount of Rs. 5,15,25,900/- as claimed by the assessee as refundable from the Excise Deptt. (100% of Excise Duty) even though the Notification in force was Notification No. 19 of 2008 dated 27.03.2008 which provides only 36% refund [and not the Notification No. 56 of 2002 dated 14.11.2002 which provided 100% of Excise Duty Refund]. Since the Excise Deptt. was under no obligation to pay balance 64% of the Excise duty collected by the assessee during the year under consideration, the amount of Rs.3,29,76,575/- cannot be taxed as income of the present year. Under these circumstances, I direct the Assessing Officer to delete the addition of Rs.3,29,76,575/-. The addition of balance amount of Rs. 1,85,49,324/- which is 36% of the Net Excise Duty it treated as income of the assessee in view of Notification No. 19 of 2008 and*

amended section 2(24)(viii) of the Income-tax Act. The sole Ground of appeal is partly allowed.

4. The Ld. CIT(DR) for the department submitted that on the facts and circumstances of the case, the Ld. CIT(A) was not right in allowing the 100% of the capital receipt when the assessee himself claimed entire amount of Rs.5,15,25,900/- as refundable from Excise Department that the assessee is following mercantile system of accounting and income is to be taxed on accrual basis and the assessee has passed this entry in the books of accounts maintained during the year under consideration and thus the Ld. CIT(A) was in error in not appreciating that as per the amended section 2(24)(xviii) of the IT Act, 1961 any assistance in the form of subsidy, grant, etc. provided by the Government or any other authority is to be considered as income/revenue receipt taxed accordingly.

5. Per contra, the Ld. Counsel for the assessee has reiterated the submission made before the Ld. CIT(A) and contended that even excise duty refundable to the extent of 36% as per amended notification is also not taxable in view of the decision of jurisdictional High Court in case of Shree Balaji Alloys & Ors. Further even after amendment the excise duty refund cannot be taxed as revenue receipt as 'exemption' is not specified in the definition given in section 2(24) (xviii) of the Act. Exemption cannot in any way be equated with waiver & concession and thus exemption from excise duty will not fall within the ambit of section 2(24) (xviii) of the Act and cannot be treated as an income.

5.1 The counsel further submitted that the Ld. CIT(A), however, himself held that when specific provision has been brought to the statute and no exemption to any specified trade or area has been provided, it is not open for the taxing authority or the tax payers to interpret the same as per their

convenience. As per section 2(24)(xviii) only two exemptions are available w.e.f. 01.04.2016 as mentioned in clause (a) & (b). There is no exemption to any specified backward area or a particular trade or industry. The Central Excise Refund is in the nature of subsidy only and cannot be claimed as exempt. However, AO has taxed the entire amount of Rs.5,15,25,900/- as claimed by the assessee as refundable from Excise Department even though the Notification in force was Notification No.19 of 2008 dt. 27.03.2008 which provides only 36% refund and not Notification No.56 of 2002 dt. 14.11.2002 which provide 100% of excise duty refund. Since the Excise Department was under no obligation to pay 64% of the excise duty collected by the assessee during the year under consideration, the amount of Rs.3,29,76,575/- cannot be taxed as income of the present year. The Ld. CIT(A) has been harsh in interpretation of the amended section ignoring the settled principle of law that if any ambiguity in law or a trade or business is expressly not covered, it would be interpreted in favour of assessee. However, he interpreted otherwise and confirm the addition of balance amount of Rs.1,85,49,324/- which is 36% of the net excise duty by treating as income of the assessee in view of Notification No.19 of 2008 and amended section 2(24)(xviii) of the IT Act. In support of its contentions the counsel has furnished a written synopsis which reads as under:

Submission:-

1. *From the facts stated above it can be noted that in view of Notification No.19/2008 dt. 27.03.2008 the assessee is entitled to only 36% of the excise duty exemption and not of 100% exemption. The SLP filed before Hon'ble Supreme Court has since been decided vide order dt. 22.04.2020 where Notification No.19/2008 dt. 27.03.2008 was upheld. Thus, now it is settled that assessee is entitled to only 36% of the excise duty exemption. Therefore, only because in the book of accounts assessee passed the relevant entries for 100% of the excise duty exemption would not put the Excise Department under any obligation to refund 64% of the excise duty paid by the assessee to it and hence the same cannot be included in the income of assessee.*

2. *It is a settled law that passing of entries in the books of accounts is not conclusive to determine the income under the provisions of the law. Whether an amount is to be considered as income or not is to be determined on the basis of the Income tax law and not on the basis of the entries made in the books of accounts. No tax can be imposed on an amount which is not earned. In this connection, reliance is placed on the following cases:-*

CIT Vs. Shoorji Vallabhdas & Co. (1962) 46 ITR 144 (SC)

Income-tax is a levy on income. No doubt, the IT Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book- keeping, an entry is made about a "hypothetical income", which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account. A mere book-keeping entry cannot be income, unless income has actually resulted.

Kedarnath Jute Mfg. Co. Ltd. Vs. CIT (1971) 82 ITR 363 (SC)

Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter.

Satluj Cotton Mills Vs CIT (1979) 116 ITR 1 (SC)
But it is now well settled that the way in which entries are made by an assessee in his books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. The assessee may, by making entries which are not in conformity with the proper accountancy principles, conceal profit or show loss and the entries made by him cannot, therefore, be regarded as conclusive one way or the other. What is necessary to be considered is the true nature of the transaction and whether in fact it has resulted in profit or loss to the assessee.

State Bank of Travencore Vs. CIT (1986) 158 ITR 102 (SC)
Some of the propositions laid by the Supreme Court which are relevant for the case are as under:-

(1) It is the income which has really accrued or arisen to the assessee that is taxable. Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation.

(2) The concept of real income would apply where there has been a surrender of income which in theory may have accrued but in the reality of the situation, no income had resulted because the income did not really accrue.

(3) The conduct of the parties in treating the income in a particular manner is material evidence of the fact whether income has accrued or not.

(4) The concept of real income is certainly applicable in judging whether there has been income or not but, in every case, it must be applied with care and within well-recognised limits.

Godhra Electricity Co. Ltd. Vs. CIT (1997) 225 ITR 746 (SC)
The assessee company was engaged in the business of generation & supply of electricity. It was entitled under the relevant law to decide on the tariff to be charged from its consumers. It increased its tariff against which consumers entered into litigation. Pending such disputes, assessee company in its books of accounts recognized the revenue as per the enhanced tariff which was taxed by the AO. However, on further appeal Hon'ble Supreme deleted the addition by holding as under:-

22. The question whether there was real accrual of income to the assessee-company in respect of the enhanced charges for supply of electricity has to be considered by taking the probability or improbability of realisation in a realistic manner. If the matter is considered in this light, it is not possible to hold that there was real accrual of income to the assessee-company in respect of the enhanced charges for supply of electricity which were added by the ITO while passing the assessment orders in respect of the assessment years under consideration. The Appellate Assistant Commissioner was right in deleting the said addition made by the ITO and the Tribunal had rightly held that the claim at the increased rates as made by the assessee-company on the basis of which necessary entries were made represented only hypothetical income and the impugned amounts as brought to tax by the ITO did not represent the income which had really accrued to the assessee-company during the relevant previous years. The High Court, in our opinion, was in error in upsetting the said view of the Tribunal.

E.D. Sassoon & Co. Ltd. Vs. CIT (1954) 26 ITR 27 (SC)
Income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him.

The ratio laid down in above cases when applied to the facts of assessee's case, it can be noted that Government of India vide amended notification has made its intention clear that the assessee would be entitled to excise duty exemption only to

the extent of 36%. The excess exemption from excise duty to the extent of 64% recognized by the assessee in its books of accounts is nothing but hypothetical income which has not accrued. This is also confirmed by Hon'ble Supreme Court by dismissing the SLP filed by the assessee. Thus, the Ld. CIT(A) has rightly deleted the addition of Rs.3,29,76,575/-.

In view of above, order of Ld. CIT(A) to this extent be upheld and appeal filed by the department be dismissed.

3. *So far as confirming the addition of 36% of excise duty exemption allowed as per Notification No.19/2008 dt. 27.03.2008 is concerned, the Ld. CIT(A) at Para 4.4 has held that as per section 2(24)(xviii) only two exceptions are available w.e.f. 01.04.2016 as mentioned in clause (a) & (b), i.e. subsidy or grant or reimbursement received to meet actual cost of asset as per Explanation 10 to section 43(1) and subsidy or grant by Central Government for the purpose of corpus of a trust. The exemption granted to the assessee does not fall in the category of exceptions. Therefore, any subsidy, grant, cash incentive, duty drawback, waiver, concession & reimbursement referred to in section 2(24)(xviii) is income and only because the word 'exemption' is not mentioned therein, it is not open for the taxing authority or the tax payers to interpret the same as per their convenience. The Ld. CIT(A) viewed that central excise refund is in the nature of subsidy and thus held that 36% of the excise duty which is refundable to the assessee is income u/s 2(24)(xviii) and hence upheld the addition to the extent of Rs.1,85,49,324/-.*

4. *It is submitted that 'exemption' and 'subsidy' are two separate & independent words. These words are not defined. Therefore, the general meaning of these words are required to be considered. As per Black's Law Dictionary (Sixth Edition) these two words are defined as under:-*

'Exemption: Freedom from a general duty or service; immunity from a general burden, tax, or charge. Immunity from service of process or from certain legal obligations, as jury duty, military service, or the payment of taxes.'

'Subsidy: A grant of money made by government in aid of the promoters of any enterprise, work, or improvement in which the government desires to participate, or which is considered a proper subject for government aid, because such purpose is likely to be of benefit to the public'

5. *From the above definition it can be noted that exemption is when assessee is given freedom from following any rules or regulations whereas subsidy is something which is given to the assessee to meet the cost of its project. In the present case, assessee is exempted from making payment of excise duty to the extent of 36% of the total excise duty collected. It is not subsidy given to meet cost of project. Hence, exemption from excise duty do not fall in the definition of income as envisaged u/s 2(24)(xviii) of the*

Act. Therefore, the amount of Rs.1,85,49,324/- is not an income but a capital receipt not taxable under the provisions of the Act.

6. *It is submitted that the constitutional bench of Hon'ble Supreme Court in Commissioner of Custom Vs. Dilip Kumar & Co. 95 Taxmannn.com 327 by referring to the decision of judgment of State of West Bengal Vs. Kesoram Industries Ltd. 10 SCC 201 decided by the bench of 5 judges, has summed up the following principles applicable to the interpretation of taxing statute:-*

'(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency;

(ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and

(iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly'."

This principal of law is also quoted by Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. Vs. CIT (2022) 448 ITR 518 at Para 50 of its decision.

7. *Applying the above settled principal of law, from Notification No.56/2002 dt. 14.11.2002 as amended by Notification No.19/2008 dt. 27.03.2008, the assessee is granted exemption from payment of excise duty to the extent of 36% of total excise duty collected. Section 2(24)(xviii) do not include the word 'exemption' in its ambit though it specifically includes subsidy, grant, cash incentive, duty drawback, waiver, concession & reimbursement. Thus, in the absence of inclusion of word 'exemption' under the clause, the scope of this section cannot be enlarged to include exemption by interpreting that it is subsidy. Hence, the addition confirmed by Ld. CIT(A) is unjustified and not as per law.*

6. We have heard the rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, the assessee firm has claimed 100% exemption on refund of excise duty on the goods manufactured by it, as the capital receipt. The DR argued that since, the assessee is following mercantile system of accounting and hence, income is to be taxed on accrual basis and further,

the assessee has passed this entry in the books of accounts maintained during the year under consideration. He contended that the Ld. CIT(A) was in error by not appreciating that as per the amended section 2(24)(xviii) of the IT Act, 1961 any assistance in the form of subsidy, grant, etc. provided by the Government or any other authority is to be considered as income/revenue receipt taxed accordingly.

7. However, the Ld. DR could not rebut the contention of the Ld. Counsel that applying the settled principal of law, from Notification No.56/2002 dt. 14.11.2002 as amended by Notification No.19/2008 dt. 27.03.2008, that the assessee was entitle for exemption for payment of excise duty to the extent of 36% of total excise duty collected. Thus, in view of Notification No.19/2008 dt. 27.03.2008, the assessee is entitled to only 36% of the excise duty exemption and not of 100% exemption as sustained by the Ld. CIT(A). The SLP filed before Hon'ble Supreme Court has since been decided vide order dt. 22.04.2020 where Notification No.19/2008 dt. 27.03.2008 was upheld. Accordingly, the assessee is entitled to 36% of the excise duty exemption.

8. In the present case, the necessary entries were made in the books of account of the appellant company to represent only hypothetical/notional income and thus, the impugned amounts as brought to tax by the ITO did not represent the income which had really accrued to the assessee-company during the relevant Assessment Year. It is a settled law that passing of entries in the books of accounts is not conclusive to determine the income under the provisions of the law. Whether an amount is to be considered as income or not is to be determined on the basis of the Income Tax law and not on the basis of the entries made in the books of accounts. In our view, no tax can be charged on an amount which is not earned.

9. In the case of “Godhra Electricity Co. Ltd. Vs. CIT”, (Supra) the Hon’ble Apex Court while adjudicating the question whether there was real accrual of income to the assessee-company in respect of the enhanced charges for supply of electricity observed that it has to be considered by taking the probability or improbability of realisation in a realistic manner. It is further observed that if the matter is considered in this light, it is not possible to hold that there was real accrual of income to the assessee-company in respect of the enhanced charges for supply of electricity. Thus, affirmed the view of the Tribunal that the claim at the increased rates as made by the assessee-company on the basis of which necessary entries were made represented only hypothetical income and the impugned amounts as brought to tax by the ITO did not represent the income of the appellant company.

10. In another case of ‘Satluj Cotton Mills Vs CIT’, (Supra) the Hon’ble Apex Court observed that it is now well settled that the way in which entries are made by an assessee in his books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. What is necessary to be considered is the true nature of the transaction and whether in fact it has resulted in profit or loss to the assessee.

11. Following the Hon’ble Apex Court (Supra), we hold that since the necessary entries made in the books of account of the appellant company represents only hypothetical/notional income although it is following mercantile system of accounting and hence, the impugned amounts as brought to tax by the ITO did not represent the income of the appellant company. Therefore, the ground No. 2 of the department is rejected.

12. From the above, it is evident that Government of India vide amended notification has made its intention clear that the assessee would be entitled to excise duty exemption only to the extent of 36%. The excess exemption from excise duty to the extent of 64% recognized by the assessee in its books of accounts is nothing but hypothetical income which has not accrued. This is also confirmed by Hon'ble Supreme Court by dismissing the SLP filed by the assessee. In view of that matter, the Ld. CIT(A) has rightly deleted the addition of Rs.3,29,76,575/-. Thus, ground no. 1 and ground no. 3 of revenue are rejected

13. Considering the factual matrix and the legal intricacies, we upheld the decision of the Ld. CIT(A) to the extent of deleting the addition of Rs.3,29,76,575/-. and accordingly, the appeal filed by the department is dismissed.

14. Now, we are taking up the assessee appeal in ITA No. 587/Asr/2019 wherein the appellant has challenged the decision of the Ld. CIT(A) that he has erred in confirming the action of the Ld. AO in making addition of Rs.1,85,49,324/- u/s 2(24)(xviii) of the Income Tax Act, 1961 being 36% of Excise Duty Exemption availed by the assessee firm. He contended that the action of Ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. He pleaded that relief may be granted by deleting entire such addition made by Ld. AO and partly confirmed by the Ld. CIT(A).

15. The Ld. CIT(A) has discussed that as per section 2(24)(xviii) only two exceptions are available w.e.f. 01.04.2016 as mentioned in clause (a) & (b), i.e. subsidy or grant or reimbursement received to meet actual cost of asset as per Explanation 10 to section 43(1) and subsidy or grant by Central Government for the purpose of corpus of a trust. The exemption granted to

the assessee does not fall in the category of exceptions. Therefore, any subsidy, grant, cash incentive, duty drawback, waiver, concession & reimbursement referred to in section 2(24)(xviii) is income and only because the word 'exemption' is not mentioned therein, it is not open for the taxing authority or the tax payers to interpret the same as per their convenience. The Ld. CIT(A) viewed that central excise refund is in the nature of subsidy and thus held that 36% of the excise duty which is refundable to the assessee is income u/s 2(24)(xviii) and accordingly, upheld the addition to the extent of Rs.1,85,49,324/-.

16. The Ld. AR argued that 'exemption' and 'subsidy' are two separate and independent words and which are not defined. He contended that therefore, the general meaning of these words are required to be considered, as per Black's Law Dictionary (Sixth Edition) wherein these two words are defined as under:-

> *'Exemption: Freedom from a general duty or service; immunity from a general burden, tax, or charge. Immunity from service of process or from certain legal obligations, as jury duty, military service, or the payment of taxes.'*
>
> *'Subsidy: A grant of money made by government in aid of the promoters of any enterprise, work, or improvement in which the government desires to participate, or which is considered a proper subject for government aid, because such purpose is likely to be of benefit to the public'*

17. From the above definitions, it is apparently clear that word exemption is used in the conditions when assessee is given freedom from following any rules or regulations whereas subsidy is something which is given to the assessee to meet the cost of its project. In the present case, assessee is exempted from making payment of excise duty to the extent of 36% of the

total excise duty collected. It is not subsidy given to meet cost of project. In our view, the exemption from excise duty do not fall in the definition of income as envisaged u/s 2(24)(xviii) of the Act. Meaning thereby, the amount of Rs.1,85,49,324/- is not an income but a capital receipt not taxable under the provisions of the Act.

18. The Hon'ble Supreme Court in "Commissioner of Custom Vs. Dilip Kumar & Co.", (Supra) by considering the decision of judgment of State of West Bengal Vs. Kesoram Industries Ltd. 10 SCC 201 decided by the bench of 5 judges, has laid down the principles applicable for interpretation of taxing statute that in interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and that If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly'. This principal of law is quoted referred by Hon'ble Supreme Court in case of "Checkmate Services Pvt. Ltd. Vs. CIT", (2022) 448 ITR 518 vide Para 50 of its judgement.

19. Respectfully, applying the above settled principal of law, to the interpretation of the Notification No.56/2002 dtd. 14.11.2002 as amended by Notification No.19/2008 dt. 27.03.2008, the assessee is granted exemption from payment of excise duty to the balance part of 36% of total

excise duty collected. Since, the word ‘exemption’ in not included in the of ambit the Section 2(24)(xviii) of the Act, though it specifically includes the words subsidy, grant, cash incentive, duty drawback, waiver, concession & reimbursement. and hence, in the absence of inclusion of word ‘exemption’ under the said clause, we are of the considered view that the scope of this section cannot be enlarged to include exemption by interpreting that it is subsidy. Accordingly, the addition of Rs.1,85,49,324/-. confirmed by Ld. CIT(A) is held to be unjustified and bad in law. As such, the part addition confirmed by Ld. CIT(A) is directed to be deleted. Thus, the ground of the assessee is allowed.

20. In the backdrop of the aforesaid discussion, the cross appeals of the department and the assessee are disposed off in the terms indicated as above.

Order pronounced in the open court on 15/06/2020

Sd/-	**Sd/-**
(Anikesh Banerjee) **Judicial Member**	**(Dr. M. L. Meena)** **Accountant Member**

*A.G/Doc**

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT(A)
(5) The DR, I.T.A.T.

True Copy
By Order

		Date	Initial	
1.	Draft dictated on			Sr.PS/PS
2.	Draft placed before author			Sr.PS/PS
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr. P.S./P.S.			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of Order			