

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES :: PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &
SHRI PARTHA SARATHI CHAUDHURY, HON.JUDICIAL MEMBER

ITA Nos.756 & 757/PUN/2019
(A.Ys. 2013-14 & 2014-15)

Parag Milk Foods Pvt. Ltd., Awasari Phata, Village Manchar, Tal – Ambegaon, Dist - Pune	vs	DCIT, Central Circle-1(1) Pune.
PAN: AABCP 0425 G		
Assessee		Respondent /Revenue

ITA Nos.488 & 489/PUN/2019
(A.Ys. 2013-14 & 2014-15)

ACIT, Circle-4, Pune.	vs	Parag Milk Foods Pvt. Ltd., Awasari Phata, Village Manchar, Tal – Ambegaon, Dist – Pune.
		PAN: AABCP 0425 G
Appellant/Revenue		Assessee

Assessee by	:	Shri Suhas P. Bora, CA
Revenue by	:	Shri M.G. Jasnani, DR
Date of hearing	:	21/06/2023
Date of pronouncement	:	27/06/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

These cross appeals preferred by the assessee and the Revenue emanates from the common order of Commissioner of Income Tax (Appeals)-11, Pune, dated 25.01.2019 for A.Ys.2013-14 & 2014-15 as per the grounds of appeals on record.

2. Both the appeals filed by the assessee are time barred by 41 days. The assessee has explained the cause of delay by filing condonation application and affidavit. After going through the contents therein, it is observed that the delay caused was neither deliberate nor intentional, which may be attributed to the conduct of the assessee if any, and rather such delay was circumstantial. Ld.DR did not raise any objection regarding condonation of delay. Therefore, delay in assessee's appeals is condoned and the matter is heard on merits.

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3. That, on perusal of the grounds of appeals, the first issue emerges from ground No.1 is with regard to disallowance u/sec. 14A r.w.r.8D(2)(iii). The other issue is with regard to direction of the Id.CIT(A) to the AO for reducing the amount of subsidy from the cost of acquisition/WDV of the fixed assets of the eligible projects and this issue is comprised in ground Nos. 2 & 3. Ground No.4 is general in nature.

4. Ground No.1 is with regard to disallowance u/sec. 14A r.w.r.8D(2)(iii). It is contended by the Id.AR that assessee has not earned any exempt income. He further submitted that Id. CIT(A) has not dealt with this issue in his order, though, the ground was raised before him. We have perused the order of the Id. CIT(A) and even the Id.DR before us conceded that the issue remains un-adjudicated by the

Id. CIT(A). We are of the considered view, in the interest of justice, this issue has to be remanded to the file of the Id. CIT(A) for adjudication as per law complying with principles of natural justice. We order accordingly. Ground No.1 in both the appeals are allowed for statistical purposes.

5. Regarding the other issue on subsidy received by the assessee as per ground Nos.2 & 3, the assessee is aggrieved against the estimation of sales tax benefit of Rs.15,37,63,279/- received under the package scheme of incentive 2007 and the AO while examining the details of the assessee observed that in the revised return of income, assessee had claimed sales-tax benefit of equal amount received under the package incentive scheme 2007 as a capital receipt, therefore, reduced it from the taxable net profit. The AO, as per detailed discussion in his order has held that the sales-tax benefit received by the assessee at 15,37,63,279/- is revenue receipt eligible to tax. The Id. CIT(A), on the other hand, relying on the decision of his predecessor in assessee's own case for A.Y. 2012-13 directed the AO to reduce the amount of subsidy from cost of acquisition/WDV on fixed assets of eligible project by allocating subsidy amount to different assets proportionately as per explanation 10 to sec.43(1) of the Act and re-compute the depreciation allowance.

6. We find that Pune tribunal on this issue in the case of *DCIT v. Haldex India Pvt. Ltd.* in ITA No. 852/PUN/2019, dated 19/05/2022 by

applying the ratio of the Hon'ble Supreme Court in the case of *CIT vs. Chaphalkar Brothers*, 400 ITR 297 (SC) after referring to its earlier decision in the case of *CIT vs. Ponni Sugars & Chemicals Ltd.*, 306 ITR 392 (SC) has held that since the subsidy was granted actually as an incentive for development and formation of industries in the less developed areas of the State of Maharashtra, the subsidy cannot be treated as revenue receipt. The relevant paras are extracted as under:-

"11. Applying the ratio of the decision of the Hon'ble Supreme Court referred to above, to the facts of the present case, since the subsidy was granted actually as incentives for encouraging the dispersal of industries to the less developed areas of the State of Maharashtra, the subsidy cannot be treated as revenue receipt. As regards to the applicability of provisions of section 28(iv) of the Act, this envisages the value of entire benefit, whether convertible to money or not, which means the benefits have to be in the kind, the monetary benefits are not covered by the said provisions of the Act as in the catena of following decisions :-

- (i) CIT vs. Indokem Ltd., 132 ITR 125 (Bombay High Court)*
- (ii) CIT vs. Alchemic Pvt. Ltd., 130 ITR 168 (Gujarat High Court)*
- (iii) Ravinder Singh vs. CIT, 205 ITR 353 (Delhi High Court)*
- (iv) CIT vs. New India Industries Ltd., 204 ITR 208 (Gujarat)*
- (v) CIT vs. Mafatlal Gangabhai and Company Pvt. Ltd., 219 ITR 644 (SC)*

12. In the light of the above legal position, we do not find any merit in the grounds of appeal filed by the Revenue. Hence, the grounds of appeal filed by the Revenue stand dismissed."

6.1 That, after going through the contents of the incentive scheme, it is observed that such incentives have been provided to encourage and develop the industries in less developed and backward areas. For the same reasons, the Pune Tribunal in the following cases has held that subsidy received by the assessee under the PSI 2007 from

Maharashtra Government is capital in nature.

- i) M/s. Shrinivas Engineering Auto Components Pvt. Ltd. v. PCIT (ITA No.777//IM/2018, dt. 28/02/2019)
- ii) DCIT v. Bhagyalaxmi Rolling Mill Pvt. Ltd. (ITA No.7-10/PUN/2019, dt. 06/05/2022)

Following the aforesaid judicial pronouncements, the consistent legal view that emerges in such circumstances, where the subsidy was granted actually as an incentive for encouraging to setup industries, such subsidy cannot be treated as revenue receipt. We set aside the order of the Id. CIT(A) and allow the ground Nos. 2 & 3 of the assessee for both the years.

7 In the result, both the appeals of the assessee are partly allowed for statistical purposes.

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8. The only issue for which revenue is aggrieved and had preferred these cross appeals is the finding of the Id. CIT(A) on the issue of subsidy directing the AO to reduce the amount of subsidy from cost of acquisition. The Revenue contends taxing the entire amount of subsidy and for upholding the findings of the AO. On this issue while dealing with the assessee's appeal, we have already held that such subsidies received being incentives to setup industries in backward areas cannot be treated as revenue receipt, therefore, grounds raised for both the years by Revenue becomes infructuous and devoid of

merit, hence, dismissed.

9 In the result, appeals of the Revenue for both the years are dismissed.

10. In the combined result, appeals of the assessee are partly allowed for statistical purposes and that of Revenue are dismissed.

Order pronounced in open Court on 27th June, 2023.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 27th June, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.