आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 84/Ind/2022
(Assessment Year:2017-18)

Bridgestone India Pvt. Ltd. Plot No.A-43, Phase-II, MIDC Chakan, Village Sawardari, Taluka Khed, Pune	Vs.	ACIT (NFAC) Delhi
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AABCB 2304 E		

Assessee by	Shri Sukhsagar Syal, AR
Revenue by	Shri P.K. Mishra, CIT-DR
Date of Hearing	23.05.2023
Date of Pronouncement	17.07.2023

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the assessment order dated 28.02.2022 passed u/s 143(3) r.w. section 144C(13) in pursuant to the directions of DRP dated 25th August 2021 passed u/s 144C(5) of the Act for Assessment Year 2017-18. The assessee has raised following grounds of appeal:

> *"1.On the facts and in the circumstances of the case and in law: The Ld. AO and Hon'ble DRP erred in making an addition of INR 35.99.09,783 (gross subsidy of INR 40,67,75,588, reduced by depreciation of INR 4,68,65,805) in respect of the subsidies received from Government of Maharashtra under the Packaged Scheme of Incentives, 2007 by treating the same as revenue receipt.*

Prayer:

The Appellant prays that the addition made by Ld. AO and Hon'ble DRP be deleted and the Ld. AO be directed to treat the amount of INR 35,99,09,783 as a capital receipt and being covered by Explanation 10 to section 43(1) of the Act..

2. The Ld. AO and Hon'ble DRP erred in making an addition of INR 4,49,15,331 (gross subsidy of INR 5,07,64,000, reduced by depreciation of INR 58,48,669) in respect of the subsidies received from Government of Madhya Pradesh under the Industrial Promotion Policy, 2004 by treating the same as revenue receipt.

Prayer:

The Appellant prays that the addition made by Ld. AO and Hon'ble DRP be deleted and the Ld. AO be directed to treat the amount of INR 4,49,15,331 as a capital receipt and being covered by Explanation 10 to section 43(1) of the Act. Total tax effect."

2. Ground no.1 is regarding addition made by the AO in respect of the subsidies received from the Government of Maharashtra under Package Scheme Incentive, 2007 by treated the same as revenue receipt. During the assessment proceedings the AO noted that the assesse has credited a sum of Rs.43,90,16,000/- on account of Maharashtra Industrial Promotion Subsidy and Rs.5,07,64,000/- on account of Madhya Pradesh Industrial Investment Promotion Assistance receivable but in computation of income the assesse has reduced its total income by Rs.45,75,39,588/-. The assesse contended before the AO that it has received the said amount against capital investment and hence the same is reduced from block of assets. The AO further noted that in the noted of accounts the said subsidy amount is shown in the form of exemption of entry tax, electricity duty exemption, exemption from tax payable to State Government, exemption from payment of stamp duty for various durations. The AO was of the view that the nature of exemption provided by State Government to the assesse it is clear that the said amount of subsidy is revenue in nature. Accordingly the AO issued a draft assessment order on 01.04.2021 and proposed to make the addition of the entire amount of subsidy received by the assesse as revenue receipt.

3. The AO after analyzing Maharashtra Industrial Promotion subsidy Scheme has come to the conclusion that the eligibility for receding incentive subject to the eligibility certificate issued under 2007 scheme and the said eligibility certificate to be issued after ascertaining that the unit has complied with the provisions of scheme and has commenced its commercial production. The benefit of incentive is not given on the investment made by the assesse but only after commencement of the production. Accordingly the AO supported its view by the judgment of Hon'ble Supreme Court in case of *Sahney Steel & Press Works Ltd. vs. CIT 228 ITR 253 (SC)* as well as *CIT vs. Ponni Sugars & Chemicals Ltd. 306 ITR 392 (SC).* The assesse filed objectionS against the draft assessment order before the DRP. The DRP has confirmed the draft assessment order and rejected objections filed by the assesse while passing direction u/s 144C(13) of the Act. The DRP has considered and followed the direction of DRP for assessment year 2016-17 wherein various case laws were referred and relied upon including the judgment of Hon'ble Supreme Court in the case of *Sahney Steel & Press Works Ltd. vs. CIT (supra).*

4. Before the Tribunal ld. AR of the assesse has submitted that DRP has relied upon the earlier directions of the DRP for A.Y.2016-17 which were reversed by the Mumbai Bench of Tribunal in assesse's own case vide order dated 21st April 2023 in ITANo. 1081/Mum/2021. He has pointed out that the AO and DRP has made the addition by discussing the subsidy scheme of 2007 of State of Maharashtra and then observed that the scheme of Madhya Pradesh is similar and accordingly the subsidy received by the assessee under both the schemes i.e. of Maharashtra and Madhya Pradesh was treated as revenue in nature.

5. On the other hand, Ld. DR has submitted that the capital investment made under the scheme is only eligibility criteria but not the sole basis for the subsidy. The subsidy is given in the shape of refund of commercial tax/sales tax, incentive amount of commercial tax on purchase of raw material only therefore, the subsidy is payable under the scheme only after the commencement of production and equivalent to

50% to 75% of the amount of commercial tax and central sales tax. The subsidy has no connection with the capital investment made by the assesse. It is only eligibility criteria that if the investment of Rs. 1 to 10 crore is made then it would be given industrial investment promotion assistance equivalent to 50% of the amount of commercial tax as well as central sales tax and if capital investment is more than Rs.10 crore then the promotion assistance amount would be equivalent 75% of the commercial tax and sales tax paid by the assessee. There is no condition in the subsidy scheme that this promotion assistance is to be utilized only for reduction of capital investment. Further the assesse in the books of account has treated the subsidy as other operating revenue and credit to the profit & loss account which shows that the Industrial Investment Promotion received by the assesse is in the nature of revenue. Only for the purpose of tax the assesse has given a different treatment to the subsidy by reducing it from the written down value of fixed assets.

6. Ld. DR has referred to the directions of the DRP and submitted that decision of the Hon'ble Supreme Court in case of Sahney Steel & Press Works Ltd. vs. CIT (supra) squarely covers the issue that the subsidy paid to the assesse in the shape of refund of commercial tax and sales tax after the commandment of production and sales made by the assesse from year to year up to period of 10 years is nothing but revenue receipts. He has relied upon directions of the DRP.

7. We have considered the rival submissions as well as relevant material on record. So far as the subsidy received by the assessee under Maharashtra Industrial Promotion Subsidy, IPS-2004 is concerned the said issue has been considered by the Coordinate Bench of the Tribunal in assessee's own case for A.Y.2015-16 as well as for A.Y.2016-17. The Mumbai Bench of the Tribunal vide order dated 21.04.2023 ITANo. 1081/Mum/2021 has considered and decided this issue as under:

> *"011. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that the identical issue arose in the case of the assessee for assessment year 2015 - 16,*

which travelled before the coordinate bench in ITA number 45/IND/2021 in assessee's own case wherein by order dated 8/12/2022, the coordinate bench held as under:-

"5. The assessee is engaged in the business of Tyre and Allied Products manufacturing. The assessee has taken Radial Tyre Manufacturing Technology and use of Bridgestone brand of manufactured products for its entrepreneurial venture in India. The assessee filed original return of income on 27.11.2015 declaring total income at Rs. NIL. On perusal of Form 3CEB filed by the assessee the Assessing Officer observed that during the assessment year under consideration, the assessee had entered into international transactions with its various Associates Enterprises (AEs). Accordingly, after seeking the prior approval of the Pr. Commissioner of Income Tax-1, the case was referred to the Transfer Pricing Officer (TPO) under Section 92CA of the Act vide letter dated 18.10.2017. The Transfer Pricing Officer (TPO) after examining assessee's transfer pricing documentation and economic analysis has passed an order dated 30.10.2018 under Section 92CA(3) of the Act determining the "Arm's Length Price" difference of Rs. 41,57,14,9471- in respect of royalty payment of its AE and Rs. 39,63,921/- in respect of international transactions relating to trading activities of the assessee. Thus, total upward adjustment of Rs. 41,96,78,868/- was made to the total income of the assessee in the said order passed by the TPO. The draft assessment order under Section 14393) r.w.s. 144C of the Income Tax Act, 1961 was passed on 18.12.2018. Thereafter, the assessee objected to the draft assessment order before Dispute Resolution Panel (DRP) under Section 144C of the Act. The DRP issued direction vide order dated 27.09.2019. After taking cognizance of the TPO and DRP's direction the Assessing Officer made addition of Rs. 29,49,00,133/- as addition of subsidies received from Government of Maharashtra under PSI, 2007.

6. Being aggrieved by the assessment order the assesse filed appeal before us.

7. The Ld. A.R. submitted that assessee entered into Memorandum of Understanding (MOU) with Government of Maharashtra on 24.06.2010 to set up a manufacturing unit at Chakan for manufacturing of steel belt radial tyre for PSR and TBR, inner tubes and flaps and accordingly the said manufacturing unit at Chakan was designated as Mega Project under PSI, 2007. The assessee submitted following details as to the subsidy under Package Scheme of Incentives (PSI), 2007 of Government of Maharashtra:

Industrial Promotion Subsidy Financial Year 2014-15 Nature Amount Treatment in books of accounts Electricity Subsidy Reduced from electricity expenses Subsidy by way of refund Rs.33,37,15,833/- Charged to P&L of VAT and CST paid to GOM (Government of Maharashtra) The Ld. A.R. submitted that subsidy received by

assessee under PSI, 2007 is a capital receipt and thus non-taxable. The assessee vide written submitted dated 12.12.2018 filed by the opinion of Senior Advocate, has opined that subsidy received by assessee under PSI, 2007 is of capital nature and hence non-taxable. The Ld. A.R. relied upon following decision:

(i) CIT vs. Ponny Sugars & Chemicals Ltd. (2008) 174Taxmann 87 (SC)

(ii) Kedarnath Jute Manufacturing Co. Ltd. 82 ITR 363

(iii) ACIT VS. Mahindra 6919&6920/Mum/2016) Vehicles Manufactures ltd.

(iv) Innoventive Industries Ltd. vs. DCIT (ITA No. 215/PN/2014)

(V) Bhagyalaxmi Rolling Mills Pvt. Ltd. vs. DCIT (ITAT No. 3428/Mum/2016)

The Ld. A.R. also filed PSI, 2007 of Government of Maharashtra, MOU it entered with Government of Maharashtra & Eligibility Certificate (EC) for Mega Project under PSI, 2007. The assessee also referred to Explanation 10 Section 43(1) of the Act in support of the arguments. The Assessing Officer observed that the subsidies received as per MOU was related to electricity duty payment exemption, 100% exemption from payment of stamp duty, ITA No.45/Ind/2021 Bridgestone India Pvt. Ltd. vs. ACIT Asst. Year 2015-16 industrial promotion subsidy, less the amount of benefits availed in form of exemption of payment of Electricity Duty & Stamp Duty, but limited to 100% eligible investments or to the extent of taxes payable to the Government of Maharashtra, whichever is lower. All form of subsidies are subject to different type frames, beginning from the date of commencement of commercial production in the Eligible Unit. The Ld. A.R. also relied upon the decision of the Mumbai Tribunal in case of ACIT vs. Mahindra Vehicles Manufactures Ltd. (ITA Nos. 6919 & 6920/Mum/2016) and the decision of Hon'ble Supreme Court in case of Sahany Steel (supra), Ponni Sugars (supra) and Bhushan Steels & Stripes Ltd. (2017) 83 taxmann.com 204 (Delhi) subsidies received under PSI, 2007 are not capital in nature and thus the assessee's contention were rejected. The Assessing Officer made addition of Rs. 29,49,00,133/- thereby allowing set up of Rs. 3,88,15,700/- under Industrial Promotion Subsidy of Rs. 33,37,15,833/-. The Ld. A.R. further submitted that the addition made by the Assessing Officer is not just and proper.

8. The Ld. D.R. submitted that the assessee himself has made contradictory claim when the receivables are declared. In fact, in Profit & Loss the assessee has declared the said subsidy as revenue and therefore, it is the assessee's contradictory claim which should not be entertained and disturbed the 20 years of assessee's own

system of accounting. The Ld. D.R. relied upon the assessment order and the order of the DRP.

9. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee is receiving subsidies related to electricity duty payment exemption, 100% exemption from payment of stamp duty and industrial promotion subsidy comprising of tax payable to the State Government during the period of 20 years starting from the date of commencement of commercial production. It is not the case of the Revenue that the assessee is not eligible for Mega Project under the Package Scheme of Incentives 2007 notified by the Government of Maharashtra from 30.03.2007 till 29.08.2009. Ld. AR at the time of hearing has produced the eligibility certificate for Mega Project new unit issued by Government of Maharashtra, Directorate of Industries dated 26.12.2013. The MOU between the Government of Maharashtra and the assessee company was signed on 26.04.2010 in respect of the proposed project of BSID on the basis of the level of proposed incentives. The said MOU is in respect of manufacturing of Steel Belt Radial Tyre for PSR and TBR, inner tubes and flaps. The disbursement of ITAs for the period 01.04.2014 to 31.03.2015 was issued by Government of Maharashtra to the assessee company on 25.05.2016. The letter dated 11.12.2018 addressed by the assessee to the Assessing Officer mentioned that based on the PSI Scheme, MOU, EC, facts and judicial precedents, the amount of IPS subsidy being of a capital nature has correctly been reduced from the costs as per Explanation 10 of Section 43(1) of the Act. The contention of the Ld. DR that the assessee consistently has treated the subsidies as Revenue in its recorded accounting system, do not nullify the actual intention of the Package Scheme of Incentives 2007 which is in capital nature. The assessee was eligible to claim subsidy and accordingly has taken benefit thereby deducting the same required to obtain eligibility certificate and in the present case the eligibility certificate was issued w.e.f. the date of commencement of commercial production by the assessee. Thus, the ITA assessee was eligible to claim the benefit of Package Scheme of Incentives for the period of 20 years. The decision of Hon'ble Supreme Court in the case of Ponni Sugars & Chemicals Limited (supra) has categorically mentioned that if the test laid down in the judgement of Sahney Steel & Press Works Limited, the assessee was free to use the money in its business entirely as it liked but in the present case the receipt of the subsidies/incentives are in respect of electricity duty exemption for the period of 15 years, 100% exemption from payment of stamp duty and industrial promotion subsidy. Therefore, the said subsidies are capital in nature as the assessee has utilised the said subsidy for setting up new unit/expansion of existing business. Thus, the decision of Hon'ble Supreme Court is squarely applicable in the present case and hence the appeal of the assessee is allowed.

10. In result, the appeal of the assessee is allowed."

012. We find that coordinate bench in assessee's own case for assessment year 2015 16 after examining the scheme has held that the object of the scheme is for industrial development of the state, therefore, applying the decision of the honourable Supreme Court in case of Ponny sugar (supra) held that the subsidy received by the assessee is a capital receipt and should go to reduce the cost of acquisition of the asset. The learned departmental representative could not show us any reason to deviate from the above decision on identical facts and circumstances. Therefore respectfully following the decision of the coordinate bench in assessee's own case for assessment year 2015-16, which is the initial year in which the revenue raised this issue for the first time and the learned DRP also relied on direction for that year, we also hold that the subsidy received by the assessee is capital receipt. Further the assessee has applied explanation 10 to section 43 (1) of the act, considering subsidy as the cost of an asset met by the government and thus reduced from the total cost of the asset by the amount of subsidy for the purpose of claiming the depreciation by producing the chart where the above sum of subsidy was reduced from the actual cost of the asset eligible for depreciation. Accordingly, both grounds of appeal are allowed.

8. To maintain the rule of consistency we follow the earlier order of this Tribunal and decide this issue in favour of the assessee so far as the subsidy received by the assesse under Maharashtra Industrial Promotion Scheme.

9. Ground no.2 is regarding the addition made by the AO and DRP in respect of the subsidy received from Government of Madhya Pradesh Under Industrial Promotion Scheme 2004 by treating the same as revenue receipt. The arguments of both parties on this ground are identical as it was put forth for the ground no.1 by both parties. Therefore for the sake of brevity we are not repeating contentions of the parties. Since this issue was first time arising from the assessment order for the year under consideration, therefore, we have to examine the same independently based on the facts available on record as well as the legal precedence on this point. The relevant clauses of the Madhya Pradesh Industrial Promotion Scheme 2004 are as under:

"4.2.15 Industrial Investment Promotion Assistance

The industries having fixed capital investment of Rs.1 to 10 crore would be given industrial investment promotion assistance,

equivalent to 50 percent of the amount of commercial tax and central sales tax (excluding the amount of commercial tax on purchase of raw materials), deposited by them. A provision would accordingly be made in the Industry Department's budget. This would be given for three years in advance districts and for five years in backward districts. The amount of assistance would not exceed more than the fixed capital investment.

The industries having fixed capital investment of more than Rs. 10 crore would be given industrial investment promotion assistance; equivalent to 75 percent of the amount of commercial tax and central sales tax (excluding the amount of commercial tax on purchase of raw materials), deposited by them. A provision would be made in the Industry Department's budget for this assistance.

S.No.	Category of District	Minimum fixed capital investment for eligibility (Rs. In crore)	Period of assistance (in Years)
1	Advance	25	3
2	Backward A	20	5
3	Backward B	15	7
4	Backward C	10	10

The amount of assistance would not exceed fixed capital investment.

Industries in I.T. Sector would get said assistance only in IT parks and not elsewhere.

Eligible industries will be entitled for capital investment subsidy and interest subsidy along with industrial investment promotion assistance scheme.

10. The assessee is in the category of having made investment of more than Rs. 10 crore and therefore, the industrial investment promotion assistance is to be received for 10 years from the date of commencement of production. The overall upper limit of the incentive is 75% of the amount of commercial tax and central tax deposited by the assessee. Since the investment was made in backward district notified as 'C",

therefore the period of assistance of subsidy to be received by the assessee is 10 years. The dispute before us is only regarding the subsidy received by the assessee in the shape of refund of commercial tax and Central Sales tax now State GST and Central GST. Though the broader policy of the State Government was to promote the industries in the backward districts of the State but immediate purpose to give the incentive to newly set up industries is to run the unit more profitable for a period of 10 years from the date of commencement of production. Thus, the purpose to give the subsidy is initial support being provided to the industry during the earlier days to enable it to become operational competitive with other established industries. Therefore, the subsidy byway of refund of commercial tax/GST is certainly not an aid to setting up of the industries or reduce the cost of capital in setting up of industry. The subsidy is not given to acquire capital asset but it is given for more beneficial carrying business of industry set up by the assessee. The subsidy is aimed to supplement trade receipts or recoupment of revenue expenditure already incurred by the assessee and therefore, the same is revenue in nature. The subsidy is not linked to the investment and setting up the industry in the backward district but it is linked and incidental to carrying out business by the said newly set up industry because without doing the business only setting up of an industry would not be entitled to receive subsidy. Therefore, merely incurring the capital expenditure in setting up of the industry would not *epso facto* entitles the assessee to receive the subsidy until and unless the business is commenced and has to be continued for at least 10 years. It is true that without capital expenditure the business of the industry cannot be carried out but the incentive is ultimately given only when the industry carried out the business and continue to carry out the same year after year up to 10 years. Therefore, the conditions of the business operations from year to year up to prescribe period is an essence of the scheme of subsidy. The receipt of incentive from State Government is incidental to carrying out the business activity and it was not intended towards capital outlays of the industry. The Hon'ble jurisdictional High Court in case of Commissioner of Income Tax

v. Dusad Industries, 162 ITR 734 decided an identical issue in favour of the assessee and has reproduced clause 8(A) of scheme in the said judgment as under:

> *" Units having capital investment up to 50 lakhs set up in category 'A' backward districts will be entitled to a subsidy of 75% of the sales tax paid in a year for a period of five years from the date of starting production. Units having fixed capital investment of over 50 lakhs but below 5 crores shall be given this amount as 15 years interest-free loan instead of subsidy. However, those units which were registered on and after September 15, 1969, but before March 31, 1971, will only get 50%. Similarly, those units which are registered with the Department after March 31, 1971, but before April 1, 1972, will get this subsidy only for a period of 3 years. The quantum of subsidy in a year would, however, be limited to 8% of the capital investment. "*

11. Therefore, so far as the scheme of subsidy and other terms and conditions relating to the subsidy equivalent to 75% on sale tax paid in the year for a period of 5 years from the date of starting the production is concerned the said part of the subsidy is identical to the present scheme of subsidy. The Hon'ble High Court has decided the issue as under:

> *"5. Learned counsel for the applicant has submitted I. A. No. 3957 of 1985 under Section 58 of the Income-tax Act for supplementary statement of facts on the ground that the learned Income-tax Appellate Tribunal has not recorded essential facts on the point of object and purpose of giving subsidy to the respondent nor is any such finding of fact given. However, after hearing learned counsel, we see no valid ground to allow this application. The same is, therefore, rejected.*
>
> *6. Learned counsel for the Revenue, Shri R. C. Mukati, relying upon the decisions in Delhi Flour Mills Co. Ltd. v. CIT [1974] 95 ITR 151 (Delhi) (sic), Dharangadhra Chemical Works Ltd. v. CIT [1977] 106 ITR 473 (Bom), Ludhiana Central Co-operative Consumers' Stores Ltd. v. CIT [1980] 122 ITR 942 (P & H), Chowringhee Sales Bureau P. Ltd. v. CIT [1973] 87 ITR 542 (SC) and Sinclair Murray and Co. P. Ltd. v. CIT [1974] 97 ITR 615 (SC), contended that this subsidy amounts to a revenue receipt and, therefore, the Tribunal has committed an error in deleting the said additions."*

12. The said judgment of Hon'ble High Court has been reversed by the Hon'ble Supreme Court in case of *Sahney Steel & Press Works Ltd. vs. CIT*

(supra). The Hon'ble Supreme Court has discussed elaborately each and every aspect of the scheme of subsidy as under:

> *"2.The salient features of the scheme formulated by the Andhra Pradesh Government was that the incentives were not available unless and until production had commenced. The availability of the incentives would be limited to a period of five years from the date of commencement of production. The incentives were to be given by way of refund of sales tax and also by subsidy on power consumed for production to the extent stated in the notification. Exemption were given also from payment of water rate. Refund was also provided for water rate in respect of water drawn from Government sources. There were certain additional incentives with which we are not concerned in this case.*
>
> *3. The important point to note is that all the incentives are production incentives in the sense that the company will be entitled to these incentives only after it goes into production. The scheme was not to make any payment directly for setting up of the industries. It is only after the industries had been commenced that the incentives were to be given.*
>
> *4. The second important thing to note is that there manner in which the incentives were given is of no consequence for determination of the question raised in this case. Incentives were given by way of refund of sales tax on raw material, machinery and finished goods. Similarly, Subsidy on " power consumed for production". In other words, if power is consumed for any other purpose like setting up the plant and machineries, the incentives will not be given. Refund of sales tax will also be in respect of taxes levied after commencement of production and upto a period of five years from the date of commencement of production. It is difficult to hold these subsidies as anything but operational subsidies. These subsidies were given to encourage setting up of industries in the State of Andhra Pradesh by making the business of production and sale of goods in the State more profitable.*
>
> *5. Mr. Ganesh appearing on behalf of the assessee has contended that the incentives scheme was for setting up new industries undertakings in the State and also for the purpose of stimulating substantial expansion of the industries. The primary object was rapid industrialisation of the State. The object was sought to be achieved by the various incentives. It was further contended that the subsidy given by the State was upto 10% of the capital investment in the undertakings. Since the subsidy was calculated on the basis of quantum of investment in capital such subsidy cannot be considered to have been received by the assessee on revenue account.*

6. It was further contended by Mr. Ganesh that grant of subsidy was on the basis of refund of sales tax on raw materials, machineries, and finished goods already paid for by the assessee for a period of five years and was of a capital nature. The object for granting refund of sales tax was that the assessee could set up new business or expand substantially his existing business.

7. Before we examine these propositions advanced by Mr. Ganesh, we will examine the facts of the case a little more. The assessee maintains its accounts according to the Calender year. It was, therefore, entitled to the benefits of the benefits of the said G.O. in the year 1973, which means assessment year 1974-75. in the said accounting year, the assessee obtained refund of the following three item totalling Rs.14,665.70 in terms of G.O.Ms.No.455. The three items are:

(i) Refund of sales tax on purchase of machines during 1971-72	*Rs. 5,839.93*
	5,839.93
(ii) Refund of sales tax on purchase of raw materials during the year 1971-72	*390.79*
(iii) Refund of Sales tax paid on sale of punished goods during the year 1971-72	*8,423.98*

8. The Income Tax Officer, while making the assessment for the year 1974-75, included the said amount in the assessable income of the assessee which was confirmed on appeal by the Commissioner of Income Tax (Appeals). On further appeal, however, the Tribunal upheld the assessee's contention and held that the amount of Rs.14,665.70, refunded to the assessee in terms of the said G.O. "did not represent refund of Sales tax" but was a development subsidy in the nature of a capital receipt. The Tribunal also held that the said amount cannot be deemed to be the income of the assessee under s.41(1) either. Thereupon the revenue asked for and obtained the reference of the following question:

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in holding that the amount of Rs.14,665 received by the assessee from the Government of Andhra Pradesh in the relevant accounting period was not liable, to be included in the total income assessable for the assessment year 1974-75".

9. The contention of Mr. Ganesh that the subsidies were of capital nature and were given for the purpose of stimulating setting up and

expansion of industries in the State cannot be upheld because of the subsidy scheme itself. no financial assistance was granted to the assessee for setting up of the industry. It is only when the assessee had set up its industry and commenced production that various incentives were given for the limited period of five years. It appears that the endeavour of the State was too provide the newly set up industries a helping hand for 5 years to enable them to be viable and competitive. Sales tax refund and the relief on account of water rate, land revenue as well as electricity charges were all intended to enable the assessee to run the business more profitably. The basic principle to be applied for determination as to whether a subsidy payment is in the nature of capital or revenue has been stated by viscount Simon in Ostime v. Pontypridd and Rhondda Joint Water board 28 T.C.262 in the following words:

"The first proposition is that, subject to the exception hereafter mentioned, payments in the nature of a subsidy from public funds made to an undertaker's trade or business are trading receipts, that is, are to be brought into account in arriving at the balance of profits or gains under Case 1 of schedule d. It is sufficient to cite the decision of this House in the sugar beet case (Smart v. Lincolnshire Sugar Co., Ltd., 20 T.C. 643; 156 L.T. 215) an illustration.

The second proposition constitutes an exception. If the undertaker is a rating authority and the subsidy is the proceeds is the proceeds of rates imposed by it or comes a fund belonging to the authority, the identify of the source with the recipient prevents any question of profits arising- see, for example, Lord Buckmaster's explanation in Forth conservancy Board V. Commissioner of Inland Revenue, (1931) A.C.540, at page 546 (16 T.C.103, at page 117) and compare what Lord Macmillan said in Municipal Mutual Insurance Ltd. V. Hills, 16 T.C. 430, at page 448."

10. In the instant case, the first proposition of Viscount Simon Clearly applies. The amount paid to the assessee in the instant case is in the nature of subsidy from public funds. The funds were made available to the assessee to assist it in carrying on its trade or business. In our view, having regard to the scheme of the Notification, there can be little doubt that the object of various assistances under the subsidy scheme was to enable to assessee to run the business more profitably.

11. In the judgement delivered by Viscount Simon with whom Lord Thankerton agreed two earlier decisions were relied on. The first of these two decision was the case of Seaham Harbour Dock Company V. Crook 16 T.c. 333. In this case the Harbour Dock Company had applied for and obtained grants from the Unemployment Grants Committee from funds appropriated by Parliament. These grants were paid as the work progressed and were equivalent to half the interest

on approved expenditure met out of loans. The payment were made several times a year for some years. The Dock company had undertaken an extension of its docks. The extended dock was also for relieving unemployment problem. Because the work undertaken was extension of the dock and the main purpose was relief of unemployment , the House of Lords held that the financial assistance given to the company for extension of the dock cannot be regarded as receipt of the trade. Lord Atkin explained the position by saying that:

"It is a receipt which is given for the express purpose which is named, and it has nothing to do with their trade in the sense in which you are considering the profits or gains of the trade."

Lord Buckmaster Observed as under: "Was this a trade receipt? and my answer is most unhesitatingly No. It appears to me that it was nothing wherever of the kind. It was a grant which was made by the Government department with the idea that by its use men might be kept in employment, and it was paid to and received by the Dock Company without any special allocation to any particular part of their [property , either capital or revenue, and was simple to enable them to carry out the work upon which they were engaged, with the idea that by so doing people might be employee."

12. Mr. Ganesh strongly relied on Seaham Harbour Company's case (supra) which does not come to the assistance of his contention in any way. In that case application for assistance was made even before the work of expansion of dock commenced. The money was for extension of docks of the company. The extension would have enabled some persons to be kept in employment who would otherwise have lost their jobs. Money was given in several instalments as the work of extension of the dock continued. Money was given for the express purpose which was named. It was found by House of Lords that it had nothing to do with the trading of the company.

13. In the case before us, payment were made only after the industries have been set up. Payments are not being made for the purpose of setting up of the industries. But the package of incentives were given to the industries to run more profitably for a period of five years from the date of the commencement of production. In other words, a helping hand was being provided to the industries during the early days to enable them to come to a competitive level with other established industries.

14. The second case is Lincolnshire Sugar Company Ltd. V. Smart, 20 T.C. 643. In that case it was found that Lincolnshire Sugar Company Ltd. carried on the business of manufacturing sugar from home grown beet. The Company was paid various sums under British Sugar industry (Assistance) Act, 1931 out of monies provided by

parliament. The question was whether these monies were to be taken into account as trade receipts or not. The object of the grant was that in the year 1981, in view of heavy fall in prices sugar, sugar industries were in difficulty. The Government decised to give financial assistance to certain industries in respect of sugar manufactured by them from home-grown beet during the relevant period. Lord Macmillan held that:

"What to my mind is decisive that these payments were made to the Company in order that the money might be used in their business." He furthered observed that :

"I think that they were supplementary trade receipts bestowed upon the company by the Government and proper to be taken into computation in arriving at the palace of the company's profits and gains for the year in which they were received."

15. In the case before us, the payments were made to assist the new industries at the new industries at the commencement of business to carry on their business. The payment were nothing but supplementary trade receipts. It is true that the assesses could not use this money for distribution as dividend to its shareholders. But the assesses was free to use the money in its business entirely as it liked and was not obliged to spend the money for a particular purpose like extension of docks as in the Seaham Harbour Dock Company's cases.

16. There is a Canadian case St. John Dry Dock & Ship Building Co. Ltd. v. Minister of National Revenue, A D.L.R., which has close similarly to the case of Seaham Harpour Dock Company's Case (supra). In that case, it was held that where subsidies were given under statutory authority, the statutory purpose for which they are authorised is relevant and may even be decisive in determining whether it is taxable income in the hands of the recipient. In that case, it was pointed out after discussing the Seaham harbor Dock Company's Case (supra) as well as that of Lincolnshire Sugar Company's case (supra) that subsidy given by the Canadian Government to encourage construction of dry docks was "an aid to the construction of dry dock and not an operational subsidy".

17. This precisely is the question raised in this case. By no stretch of imagination can the subsidies whether by way of refund of sales tax or relief of electricity charges or water charges can be treated as an aid to setting up of the industry of the assesses. As we have seen earlier, the payments were to be made only if and when asssessee commenced its production. The said payments were made for a period of five years calculated from the date of commencement of production in the assessee's factory. The subsidies are operational subsidies and not capital subsidies

18. Mr. Ganesh's further argument was that the three types of refunds contemplated in the scheme, the refund of sales tax on purchase of machinery must be treated as capital. The payment for the purchase of machineries must be of capital nature and the entire payment of sales tax must have been treated as capital expenditure of the Company. If any refund of sales tax paid on purchase of capital goods is made the refund will partake of the character which it had originally borne. Such refunds cannot in any circumstances be treated as trade receipts or supplementary trade receipts. This argument overlooks the basic principle laid down in the cases discussed above. It is not the source from which the amount is paid to the assesses which is determinative of the question whether the subsidy payments are of revenue or capital nature. The first proposition stated by Viscount Simon in Ostime's Case (supra) is that if payment in the nature of subsidy from public funds are made to the assessee to assist him in carrying on his trade or business, they are trade receipts. The sales tax upon collection forms part of the public funds of the State. If any subsidy is given, the character of the subsidy in the hands of the recipient-whether revenue or capital- will have to be determined by having regard to the purpose for which the subsidy is given. If it is given by way of assistance to the assessee in carrying on of his trade or business, it has to be treated as trading receipt. The source of the fund is quite immaterial.

19. For example, if the scheme was that the assessee will be given refund of sales tax on purchase of machinery as well as on raw materials to enable the assessee to acquire new plants and machinery for further expansion of its manufacturing capacity in a backward area, the entire subsidy must be held to be a capital receipts in the hands of the assessee. It will not be open to the Revenue to contended that the refund of sales tax paid on raw materials or finished products must be treated as revenue receipts in the hand of the assessee. In both the cases , the Government is paying out of public funds to the assessee for definite purpose. If the purpose is to help the assessee to set up its business or complete a project as in Seaham Harbour Dock Company's Case(supra), the monies must be treated as to have been received for capital purpose. But if monies are given to the assessee for assisting him in carrying out the business operation and the money is given only after and conditional upon commencement of production, such subsidies must be treated as assistance for the purpose of the trade.

20. In Seaham Harbour Dock Company's case (supra) which appears to be sheet-anchor of the argument of Mr. Ganesh, the Company in contemplation of an expansion of its dock had applied for financial assistance to the Unemployment Grants Committee. The Committee gave financial assistance from time to time as the work progressed and the payment was equivalent to half the interest for two years (not exceeding average rate of 5-1/2 per cent per annum)

on approved expenditure made out of loans. Even though the payment was equivalent to half the interest amount payable on the loan which might have been a revenue expenditure the House of Lords had no difficulty in holding that the money received by the company was not in course of trade but was of capital nature.

We shall now see how our Courts have dealt with the problem.

21. This Court in V.S.S.V. Meenakshi Achi & Anr. Vs. Commissioner of Income Tax, Madras, 60 ITR 253 followed the same principle and relied upon and approved of an English decision in the case of Higgs V. Wrightson.(1944) 26 T.C.

73. There a dairy farmer had received grant in respect of the ploughing and bringing into a state of cleanliness and fertility land previously under grass for seven years or more. Macnaghtenn, j. held that since the amount of the grant depends on the area ploughed, the grant was towards the expenditure of ploughing and therefore, a revenue receipts in the hands of the assessee. It was observed in Meenaksi Achi's case (supra) by subha Rao, j. (as His Lordship then was):

"So too, in the instant case, the payments to the planters were made against the expenditure incurred for maintaining the rubber plantations.

Having regard to the aforesaid facts, we must hold that the amounts from the fund earmarked for the appellants on the basis of the rubber produced by them were paid against the expenditure incurred by them for maintaining the rubber plantation and producing the rubber."

23. A full bench of the Kerala High Court examined the question of subsidy received for replanting rubber trees in the case of Commissioner of Income Tax V. Ruby Rubber Works Ltd. 178 ITR 181. it dealt with a scheme of subsidy framed by the Rubber Board in 1976 for replanting rubber planting. The subsidy was not given for budding immature unselected plants but was not given for budding immature unselected plants but was restricted to replanting only of old and uneconomic trees. The subsidy was not for the purpose of upkeep or maintenance of immature rubber trees. On these facts, the Full Bench came to the conclusion that the object of the Scheme was replanting and the subsidy was being paid for planting high yielding variety of rubber plants which the Rubber Board and the Government thought was necessary for the Development of the rubber industry. What was sought was to be achieved was a public purpose of vital public interest.

24. The full Bench pointed out that the economic assistance offered by the Board was under stringent conditions for implementing a

scheme designed to achieve development of rubber plantation industry on efficient and economic lines. After an exhaustive revue of the case law and the subsidy scheme, the full Bench observed.

"We are tempted to say that the subsidy received by the assessee is used to acquire an asset by replanting high-yield variety of rubber trees. The difference is, as said by Bowen L.J., the expenditure in the acquisition of the concern will be capital expenditure and the expenditure in carrying on the concern is revenue expenditure. This makes the vital difference between the cases reported in Karimtharuvi Tea Estates Ltd. V. State of Kerala (1963) 48 ITR (SC) 83 and Travancore Rubber and Tea Co. Ltd. V. Commr. Of Agrl. I.T. (1961), 41 ITR 751 (SC)."

25. So far as the scheme is concerned, the full Bench further observed:

"The subsidy scheme makes it very clear, that the amount of subsidy has to be spent 'for the acquisition of an asset' by replanting rubber plants of high- yielding varieties."

26. It will be seen from this decision that the Full Bench relied upon the decision of the House of Lords in Seaham Harbour Dock Company's Case (supra) and pointed out that a beneficial scheme had been evolved for replanting of the trees and as a result of replanting, the assesses acquired an asset which was of capital nature. It was further pointed out in that judgement that the scheme was definitely only for one purpose, viz., replanting. It was not for the purpose of unkeeping and maintaining nature of immature rubber plants. This was the vital factor on the basis of which the full Bench of the Kerala's High Court came to the conclusion that the subsidy given for replanting of old rubber trees cannot be included as a revenue receipt of the rubber company.

27. Our attention was drawn to the case of Sadichha Chitra . V. Commissioner of Income Tax, 189 ITR 774. In that case, was noted that in a given case subsidy may be granted with the object of supplementing trade receipts and profits of the recipient. In another case, the scheme of subsidy may have been formulated by the authority to assist the assessee in acquiring a capital asset or for the growth of the industry generally in public interest without any objective of supplementing trade receipts or recoupment of revenue expenditure already incurred by the assessee.

28. In that case, the Government of Maharashtra sanctioned a subsidy scheme for grant of financial assistance to Marathi film producers to promote production of better Marathi films and help Marathi colour films in preference to black and white films. It will be seen from the facts noted in the judgement of the Bombay High Court

that any producer of Marathi films could apply to the Collector of Bombay (Entertainment Duty Department) for grant of a certificate of eligibility for getting the grant. The Collector after holding necessary enquiry in respect of various matters referred in the scheme would recommended that the desease of the amount to the applicant. One of the pre-conditions of the grant was that the applicant must prepare adequate plants for production of new film and also fulfil financial and technical requirement for production of the film. Financial assistance was to be given in four equal instalments in the following manner. The first instalment was to be released after completion of one third of the proposed footage of the film, the second instalment on the completion of the entire film ready for censors and the financial instalment had to be released immediately after the new film had crossed the hurdle of censorship and actual release. It was noted in the judgement:

"The said subsidy was released to the assessee so as to assist the assessee to acquire a new capital asset so as to meet part of the cost of the new film in public."

29. On the basis of that vital distinction, the Court held that the ratio of the judgement of this court in Meenakshi Achi's case was not applicable in the facts of the case before it.

30. In the case of Commissioner of Income Tax v. Udaya Picture (p) Ltd., 225 ITR 394, subsidy was granted by the State Government for producing new regional films. It was held that the entitlement to the subsidy sprang from the business carried on by the assessee and the amount was received during the course of conduct of the business. What was received by the assessee was not capital receipt but a subsidy.

31. The facts of this case have not been clearly stated in the judgement. But it appears that subsidy was granted after making of the film. The Bombay judgement in the case of Sadichha Chitra (supra). Proceeded on the footing that subsidies were granted as and when the film was being completed which resulted in creation of a capital asset. A similar vies was taken by the Andhra Pradesh High Court in the case of Commissioner of Income Tax V. Chitra Kalpa, 177 ITR 540 where it was held that subsidy was for making a film and was to be treated ad a capital receipt because the film taken by the Bombay and Kerala Courts appears to be correct and accords with the principle laid down in Seaham Harbour Dock Company's Case (supra) that assistance given by the Government for completion of a project must be of capital nature.

32. In the case before us, subsidies have not been granted for production of or bringing into existence any new asset. The subsidies were granted year after year only after setting up of the new industry

and commencement of production. Such a subsidy could only be treated as assistance given for the purpose of carrying on of the business of the assessee. Applying the test of Viscount Simon in the case of Ostime. It must be held that these subsidies are of revenue character and will have to be taxed accordingly.

33. A Division Bench of the Calcutta High Court in the case of Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Income Tax, 191 ITR 518 also examined a scheme of refund of sales tax framed by Andhra Pradesh Government to assist newly set up industries. There the assessee had set up a cement plant. The Calcutta High Court held that receipt of the incentives from the State Government was incidental to carrying on the business of the assessee . Such subsidies were received year after year by refund of sales tax. The benefit was received in course of carrying on the assessee's business. it was a benefit incidental to its business. The subsidy was not intended to be contribution towards capital outlay of the industry. Therefore, it was held that the subsidy received by the assessee in that case could not be regarded as anything but a revenue receipt.

34. The Madhya Pradesh High Court in the case of Commissioner of Income Tax v. Dusad Industries, 162 ITR 734, dealt with a case where Government had framed a scheme for granting sales tax subsidies to industries set up in backward areas. The High Court was of the view that the object of the scheme was not to supplement the profits made by industries. In that view of the matter, the High Court held that the subsidies five under the said scheme by the Government to newly set up industries were capital receipts in the hands of the industries and could not be taxed as revenue receipts. In that case, 75 per cent of the sales tax paid in a year for a period of five years from the day of starting of production was to be given back by the Government to the industry concerned. The High Court was of the view that obviously the subsidy was given by way of addition to the profits of the assessee as was clear from the facts and circumstances of the case. The Madhya Pradesh High Court, however, failed to notice the significant fact that under the scheme framed by the Government, no subsidy was given until the time production was actually commenced. Mere setting up of the industry did not qualify an industrialist for getting any subsidy. The subsidy was given as help not for the setting up of the industry which was already commenced production. The view taken by the Madhya Pradesh High Court is erroneous.

35.In view of the aforesaid, it is not necessary to discussed the point relating to applicability of section (41) of the Income Tax Act, 1961 in this case."

13. As clear from para 34 the judgment that the decision of Hon'ble jurisdictional High Court in the case of *CIT vs. Dusad Industries (supra*) has been reversed by the Hon'ble Supreme Court by holding that the view taken by the High Court is erroneous. Therefore, the issue arising from the scheme of subsidy formulated by the State of Madhya Pradesh has attained finality as settled by the Hon'ble Supreme Court in the said judgment. This view of the Hon'ble Supreme Court in case of *Sahney Steel & Press Works Ltd. vs. CIT (supra)* has been reiterated in case of *CIT vs. Ponni Sugars & Chemicals Ltd. 306 ITR 392* as under*:*

> *"14. In our view, the controversy in hand can be resolved if we apply the test laid down in the judgment of this Court in the case of Sahney Steel and Press Works Ltd. (supra). In that case, on behalf of the assessee, it was contended that the subsidy given was up to 10% of the capital investment calculated on the basis of the quantum of investment in capital and, therefore, receipt of such subsidy was on capital account and not on revenue account. It was also urged in that case that subsidy granted on the basis of refund of sales tax on raw materials, machinery and finished goods were also of capital nature as the object of granting refund of sales tax was that the assessee could set up new business or expand his existing business. The contention of the assessee in that case was dismissed by the Tribunal and, therefore, the assessee had come to this Court by way of a special leave petition. It was held by this Court on the facts of that case and on the basis of the analyses of the Scheme therein that the subsidy given was on revenue account because it was given by way of assistance in carrying on of trade or business. On the facts of that case, it was held that the subsidy given was to meet recurring expenses. It was not for acquiring the capital asset. It was not to meet part of the cost. It was not granted for production of or bringing into existence any new asset. The subsidies in that case were granted year after year only after setting up of the new industry and only after commencement of production and, therefore, such a subsidy could only be treated as assistance given for the purpose of carrying on the business of the assessee. Consequently, the contentions raised on behalf of the assessee on the facts of that case stood rejected and it was held that the subsidy received by Sahney Steel could not be regarded as anything but a revenue receipt. Accordingly the matter was decided against the assessee. The importance of the judgment of this Court in Sahney Steel case lies in the fact that it has discussed and analysed the entire case law and it has laid down the basic test to be applied in judging the character of a subsidy. That test is that the character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is*

given. In other words, in such cases, one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. The source is immaterial. The form of subsidy is immaterial. The main eligibility condition in the scheme with which we are concerned in this case is that the incentive must be utilized for repayment of loans taken by the assessee to set up new units or for substantial expansion of existing units. On this aspect there is no dispute. If the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account. Therefore, it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form of the mechanism through which the subsidy is given is irrelevant.

15. In the decision of House of Lords in the case of Seaham Harbour Dock Co. v. Crook (1931) 16 TC 333 the Harbour Dock Co. had applied for grants from the Unemployment Grants Committee from funds appropriated by Parliament. The said grants were paid as the work progressed the payments were made several times for some years. The Dock Co. had undertaken the work of extension of its docks. The extended dock was for relieving the unemployment. The main purpose was relief from unemployment. Therefore, the House of Lords held that the financial assistance given to the company for dock extension cannot be regarded as a trade receipt. It was found by the House of Lords that the assistance had nothing to do with the trading of the company because the work undertaken was dock extension. According to the House of Lords, the assistance in the form of a grant was made by the Government with the object that by its use men might be kept in employment and, therefore, its receipt was capital in nature. The importance of the judgment lies in the fact that the company had applied for financial assistance to the Unemployment Grants Committee. The Committee gave financial assistance from time to time as the work progressed and the payments were equivalent to half the interest for two years on approved expenditure met out of loans. Even though the payment was equivalent to half the interest amount payable on the loan (interest subsidy) still the House of Lords held that money received by the company was not in the course of trade but was of capital nature. The judgment of House of Lords shows that the source of payment or the form in which the subsidy is paid or the mechanism through which it is paid is immaterial and that what is relevant is the purpose for payment of assistance. Ordinarily such payments would have been on revenue account but since the purpose of the payment was to curtail/obliterate unemployment and since the purpose was dock extension, the House of Lords held that the payment made was of capital nature.

16. One more aspect needs to be mentioned. In Sahney Steel and Press Works Ltd. (supra) this Court found that the assessee was free to use the money in its business entirely as it liked. It was not obliged to spend the money for a particular purpose. In the case of Seaham Harbour Dock Co. (supra) assessee was obliged to spend the money for extension of its docks. This aspect is very important. In the present case also, receipt of the subsidy was capital in nature as the assessee was obliged to utilize the subsidy only for repayment of term loans undertaken by the assessee for setting up new units/expansion of existing business.

17. Applying the above tests to the facts of the present case and keeping in mind the object behind the payment of the incentive subsidy we are satisfied that such payment received by the assessee under the Scheme was not in the course of a trade but was of capital nature. Accordingly the first question is answered in favour of the assessee and against the Department."

14. Therefore, so far as the subsidy on account of refund of sales tax and now GST is concerned the view taken in *Sahney Steel & Press Works Ltd. vs. CIT (supra)* was reiterated. The larger bench of the Hon'ble Supreme Court in case of ***Ccommissioner Of Income-Tax vs Rajaram Maize Products*** **251 ITR 427** has also concurred with the view as taken in the case of *Sahney Steel & Press Works Ltd. vs. CIT (supra)* and reversed the judgment of Hon'ble jurisdictional High Court reported in case of ***Ccommissioner Of Income-Tax vs Rajaram Maize Products*** **234 ITR 667**. We further note that the Hon'ble jurisdictional High Court in case of *Sundram Exhibition (P) Ltd. vs. CIT 154 taxman 132* has again considered an identical issue in para 6 to 8 as under:

"6. *In our opinion, therefore, all the decisions cited by learned counsel for the assessee being prior in point of time, as against Sahney Steel (supra), they are of no consequence and hence, distinguished on this ground only. In our view, the Tribunal was right in placing reliance on the decision rendered in the case of Sahney Steel (supra) for deciding the nature of subsidy received by the assessee in this case and returning the finding that it is in fact in the nature of "revenue receipt". This is how the Tribunal decided the issue in question keeping in view the guidelines contained in the decision of Sahney Steel's case (supra):*

"Since the issue regarding ascertainment of nature of subsidy has been re-examined by the apex Court in the case of Sahney Steel &

Press Works Ltd. vs. CIT (supra), we have to examine this issue afresh in the light of guidelines laid by the Hon'ble Supreme Court. By this judgment the Hon'ble apex Court has overruled the judgment of the Madhya Pradesh High Court in the case of CIT vs. Dusad Industries (supra) in which the receipt of power subsidy was treated as capital receipt. In Sahney Steel Press Works Ltd. (supra), their Lordships have finally held after examining various judgments that if under any notification the payments were made to assist the new industries at the commencement of business to carry on their business. The payments were nothing but supplementary trade receipts. It was true that the assessee could not use this money for distribution as dividend to its shareholder but the assessee was free to use the money in its business entirely as it liked and was not obliged to spend the money for a particular purpose.

The subsidies had not been granted for production of, or bringing into existence any new asset. The subsidies were granted year after year only after setting up of the new industry and commencement of production. Such a subsidy could only be treated as assistance given for the purpose of carrying on of the business of the assessee. These subsidies were of revenue nature and would have to be taxed accordingly. Their Lordships have held that if the payment in the nature of subsidy from public funds are made to the assessee to assist him in carrying on his trade or business, they are trade receipts. The character of the subsidy in the hands of the recipient, whether revenue or capital, will have to be determined having regard to the purpose for which the subsidy is given. The source of the fund is quite immaterial. However, if the purpose is to help the assessee to set up its business or complete a project, the monies must be treated as having been received for capital purposes, but if the monies are given to the assessee for assisting him in carrying out the business operations and the money is given only after and conditional upon commencement of production, such subsidies must be treated as assistance for the purpose of trade.

4. From a careful perusal of the aforesaid judgment, we are of the view that before giving a treatment to any subsidy received by the assessee from public fund, any authority adjudicating this issue should examine the nature of receipts and the purpose for which it is being given to the assessee. If it is given to help the assessee in setting up its business or to complete its project by purchasing remaining capital assets, the subsidy must be treated as having been received for capital purpose, but if the subsidy is given after the setting up of the business or its commencement, to help the assessee in carrying out the business operation smoothly, the subsidy should be treated as assistance for the purpose of trade and it should be exigible to tax. In the instant case, the subsidy was given after the commencement of the cinema house. There is no whisper from record that the subsidy was given either for setting up of the cinema house

or for completion of the project. It is immaterial to the controversy involved in the case whether it was a refund of entertainment tax or any financial assistance provided by the State. Our attention was invited to the rules provided in M.P. Naye Cinemagharo Ke Nirman Ko Protsahan Yojna Ke Sahayata Anudan Niyam, 1982 and it was urged on behalf of the assessee that the assessee has received the subsidy after fulfilling the requisite requirement prescribed under the rules. From a careful perusal of these rules, we may draw an inference that the financial assistance was provided to encourage the cinema owners in this line of business so that they may construct another cinema house, but in the instant case, no efforts were made on behalf of the assessee to construct any other cinema house and he has used the subsidy received from the State Government in its business entirely.

5. Having regard to the above observations, we are of the view that the subsidy received by the assessee is of revenue nature and is exigible to tax. We, therefore, set aside the order of the CIT(A) and restore that of the AO."

7. *We are completely in agreement with the view so taken by the Tribunal quoted supra as in our considered view it is in accord with the guidelines laid down by the Supreme Court in the case of Sahney Steel (supra). The subsidy in question was not given to assessee for establishment of business i.e. it was not meant to be used prior to commencement of commercial business so as to make the same as capital one i.e. in the form of fixed assets but it was given to the assessee after they commenced the business i.e. for running the business. If the assessee is given any subsidy for running their business, then such subsidy is never regarded as capital but it is regarded as revenue receipt. It is this distinction that must be kept in consideration while deciding the true nature of subsidy. In other words, every subsidy cannot be regarded as capital receipt or revenue receipt. In order to decide its real character, one is required to examine the scheme, object and its purpose for which it is given and then one can come to a conclusion as to whether it is a capital receipt or revenue receipt.*

8. *In view of foregoing discussion and in the light of finding recorded by the Tribunal, we answer the question referred to this Court against the assessee and in favour of Revenue. In other words, we answer the question by holding that subsidy received by the assessee for the assessment year in questions was in the nature of revenue receipt and was accordingly exigible to tax as such."*

15. Therefore, the issue of taxability of the subsidy granted by the Government of Madhya Pradesh under the scheme of subsidy was considered by the of Hon'ble jurisdictional High Court in a series of judgments which were either decided against the assesse or were finally reversed and decided in favour of the revenue by the Hon'ble Supreme Court. The Hon'ble High court in catena of judgments reported 148 taxmann 603, 131 taxmann 207, 143 taxmann 40, 144 taxmann 147 & 148 taxmann 603 have also considered and decided this issue by following the judgment of Hon'ble Supreme Court in case of *Sahney Steel & Press Works Ltd. vs. CIT (supra).* Accordingly, by following the binding precedents of Hon'ble jurisdictional High Court as well as Hon'ble Supreme Court sited (supra), we hold that the subsidy received by the assesse under Industrial Promotion Scheme of Madhya Pradesh is revenue in nature. Hence, this issue is decided against the assesse and in favour of the revenue.

16. In the result, appeal of assessee is partly allowed.

Order pronounced in the open court on 17.07.2023.

Sd/-	**Sd/-**
(B.M. BIYANI)	**(VIJAY PAL RAO)**
Accountant Member	Judicial Member

Indore, 17.07.2023

Patel/Sr. PS

Copies to:
(1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore