आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./**I.T.A. Nos.581 & 585/Chny/2021**
निर्धारण वर्ष/**Assessment Year: 2011-12**

The Deputy Commissioner of Income Tax, Non Corporate Circle 8, Room No. 507, 5th Floor, Annexe Building, No. 121, M.G. Road, Chennai -600 034.	Vs.	M/s. Saint-Gobain India Pvt. Ltd. [Formerly known as M/s. Saint-Gobain Glass India Ltd.], 18/3, Sigapi Achi Building, 7th Floor, Rukmini Lakshmipathi Road, Egmore, Chennai 600 008. **[PAN:AABCS4338M]**
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri AR V Sreenivasan, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri R. Vijayaragahavan, Advocate & Shri Saroj Kumar Parida, Advocate
सुनवाई की तारीख/ Date of hearing	:	11.12.2023
घोषणा की तारीख /Date of Pronouncement	:	20.12.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

The appeal in ITA No. 581/Chny/2021 filed by the Revenue is directed against the assessment order passed under section 143(3) r.w.s. 92CA of the Income Tax Act, 1961 ["Act" in short] dated 28.02.2015 for the assessment year 2011-12 and the other appeal in ITA No. 585/Chny/2021 is directed against the order of the ld. Commissioner of

Income Tax (Appeals) 10, Chennai, dated 13.03.2020 for the assessment year 2011-12.

2. Both the appeals filed by the Revenue are delayed by 576 days and 522 days in filing the appeal before the Tribunal due to outbreak of COVID-19 pandemic and accordingly, the delay in filing the appeals are condoned and admitted the appeals for adjudication.

3. First, we shall take the appeal No. 581/Chny/2021 for adjudication. Ground No. 1 is general in nature and requires no adjudication.

4. Ground No. 2 relates to deletion of addition made under section 40(a)(i) of the Act. The ld. Counsel for the assessee has submitted that the very same issue was subject matter in appeal before the Tribunal in earlier assessment year 2007-08 in ITA No. 2394/Chny/2017 & CO No. 188/Chny/2017 dated 29.10.2018. The issue has been remitted back to the Assessing Officer to examine MFN clause available in the protocol of Indo-Belgium DTAA as to whether the same shall override the specific provisions laid down under Article 12 and decide the issue afresh in accordance with law and prayed that the same order may be followed for the year under consideration.

4.1 On the other hand, the ld. DR has not raised any objection.

4.2 We have heard both the sides, perused the orders of authorities below. With regard to the issue of addition made under section 40(a)(i) of the Act, we find that this issue has been considered by the Coordinate Bench of the Tribunal for assessment year 2007-08 and held as under:

> *5. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. We have also perused the paper book filed by the assessee. With regard to the non-deduction of TDS on the commission payment, the inferences made by the Assessing Officer that the services rendered by the assessee are in the nature of managerial services, as has been categorized as "fees for technical services" in the Indo-Belgium DTAA – Article 12, appears to be reasonable since the definition of "fees for technical services" in the Indo-Belgium DTAA is an expressively expanded definition and the same is reproduced as under:*
>
> ***"ARTICLE 12 : Royalties and fees for technical services**:*
>
> > *1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
> >
> > *[2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and, according to the laws of that State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.]*
> >
> > *3. [(a) ...]*
> >
> > *(b) The term "fees for technical services" as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 14, <u>in consideration for services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel</u>."*
>
> *Since the above said payments have been considered as the payment made for the purpose of managing the sales affairs, the payment made to the company situated in Belgium is liable for taxation specifically only in India as per Article 12 of the Indo - Belgium DTAA. The ld. CIT(A) was also of the same*

opinion as stated above. The assessee has alternatively claimed that the payment made to SG Exprover is not taxable in terms of the tax treaty. Though the ld. CIT(A) noted that the definition of the term "fees for technical services" under the treaty between India and Belgium includes services of managerial nature, having regard to the MFN clause in the India-Belgium Treaty, the restrictive definition of the term "fee for technical services" in the India-UK Treaty can be applied and by following various decisions as referred hereinabove, the ld. CIT(A) held that the payment made to SG Exprover cannot be considered to partake of the nature of "fees for technical services" and allowed the ground raised by the assessee without obtaining any comments from the Assessing Officer. Under the above facts and circumstances, we direct the Assessing Officer to examine the MFN clause available in the Protocol of Indo-Belgium DTAA as to whether the same shall override the specific provisions laid down under Article 12 and decide the issue afresh in accordance with law. Thus, the ground raised by the Revenue is allowed for statistical purposes.

4.3 Since the issue involved in this appeal is similar to that of the assessment year 2007-08 and in view of the above findings of the Tribunal, we direct the Assessing Officer to re-examine and decide the issue afresh in accordance law. Thus, the ground raised by the Revenue is allowed for statistical purposes.

5. The next ground raised in the appeal of the Revenue is that the ld. CIT(A) erred in directing the Assessing Officer to recompute the disallowance under section 14A of the Act to the extent of investments which yield exempt income during the year under consideration. In the assessment order, the Assessing Officer has determined the disallowance under section 14A of the Act and while doing so, as per Rule 8D(2)(iii), the Assessing Officer has taken 0.5% of average value of investment for determining the disallowance.

5.1 Before the ld. CIT(A), the AR of the assessee has argued that the average value of investments ought to have been computed by taking into account only those investments on which the assessee had received dividend income during the year for calculating the disallowance under Rule 8D(2)(ii)/(iii). After considering the submissions of the assessee and by following the Special Bench of ITAT decision in the case of Vireet Investments, the ld. CIT(A) has directed the Assessing Officer to recompute the disallowance.

5.2 We have heard the rival contentions. We have also perused the decision of Delhi Special Bench of the Tribunal in the case of ACIT v. Vireet Investment (P) Ltd. (2017) 165 ITD 27 (Delhi)(SB), wherein, it has been held that while computing the disallowance under section 14A of the Act read with Rule 8D(2)(ii)/(iii) of Income Tax Rules, 1962, only the investments which yielded exempt income during the year under consideration are to be included for the purpose of average value of investments. The ld. DR could not controvert the above decision of the Delhi Special Bench. Thus, we find no infirmity in the order of the ld. CIT(A) on this issue and dismiss the ground raised by the Revenue.

6. The next ground raised in ground No. 4.1 & 4.2 is that the ld. CIT(A) has erred in holding that the disallowance under section 14A of the Act

cannot be added in the book profit under section 115JB of the Act. In the assessment order, the Assessing Officer made disallowance under section 14A r.w. Rule 8D in the computation of book profit under section 115JB of the Act as per clause (f) to explanation (1) to section 115JB of the Act. On appeal, by following Delhi Special Bench of the Tribunal in the case of ACIT v. Vireet Investment (P) Ltd. (2017) 165 ITD 27 (Delhi)(SB) as well as in the case of Beach Minerals Company P. Ltd. v. ACIT 64 taxmann.com 218, the ld. CIT(A) directed to delete the addition made to book profits with respect to the disallowance made under section 14A of the Act r.w.s. Rule 8D.

6.1 We have heard the rival contentions and perused the case law relied upon the appellate order. By following the decision in the case of Beach Minerals Company P. Ltd. v. ACIT (supra), in assessee's own case for the assessment year 2007-08 in ITA No. 2096/Mds/2011 dated 13.07.2016, the Coordinate Benches of the Tribunal has held that the provisions of section 14A r.w.r. 8D cannot be applied while computing the book profits as per section 115JB of the Act. Moreover, in the case of ACIT v. Vireet Investment (P) Ltd. (supra), wherein, the Delhi Special Bench has categorically held at para 6.22 of its order that the computation under clause (f) of Explanation 1 to Section 115JB(2) is to be made without resorting to the computation as contemplated under section 14A read with

Rule 8D of the Income Tax Rules. Hence, we are of the opinion that the ld. CIT(A) has rightly directed the Assessing Officer to delete the addition made to book profits with respect to the disallowance made under section 14A r.w.s. Rule 8D. Thus, the ground raised by the Revenue is dismissed.

7. In the appeal in ITA No. 585/Chny/2021, the only issued involved is with regard to the addition made towards investment promotion subsidy as revenue receipt or capital receipt. The facts of the case are that during the year, the assessee company has received ₹.4,92,53,755/- from the Govt. of Tamilnadu. The assessee has treated the same as capital receipt. In response to this issue in the reopening, the assessee has given a reply vide their letter dated 21.12.2016 and reproduced in the assessment order are extracted as under

> *"The company had set up its first Float Glass factory at Sriperumbudur, Tamilnadu in the year 1999 and commenced commercial production from the year 2000. In the year 1991, the Government of Tamil Nadu vide G.O.Ms.No.323 dated 18.08.1991 had introduced special incentives to accelerate mega investments in the State. The State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT) was the implementing agency for the above scheme and the companies would have to enter into a Memorandum of Understanding with the Government of Tamil Nadu.*
>
> *As part of the above, the Government vide G.O.Ms. No. 43 dated 13.12.1992, provided different package of incentives based on the investments made. The special incentives were provided to boost mega investments in the state. As per the above G.O., an industry set up anywhere in Tamil Nadu having an investment of Rs.300 Crores and above will be eligible for sales tax waiver up to 7 years. The assessee's investments was more than Rs.300 crores and hence SIPCOT, an undertaking of Government*

of Tamil Nadu State, the nodal agency and Commercial Tax Department, Tamil Nadu issued required orders/ certificates granting sales tax waiver for 7 years from Sep 2000 to Aug 2007.

When Value Added tax System (VAT) was introduced in Tamil Nadu from January 2007, all the Companies to whom Sales tax Waiver Scheme was granted, were required to collect VAT and CST and remit to the Government. The companies who had executed MOUs requested the Government to issue notification to enable them to get ret refund/soft loan against the taxes paid by them for the period from January 2007 till the end of the period of eligibility. Accordingly, the Government of Tamil Nadu vide G.O.Ms.No. 80 dated 26.03.2008 ordered that "to make the existing scheme of incentives to the industry compatible with VAT regime, wherever, the unit was availing exemption/waiver, the unit would be paid Investment Promotion Subsidy equivalent to the amount of Sales Tax paid during unutilized portion of the waiver period.

In accordance with the above, the Government of Tamil Nadu through SIPCOT paid Investment Promotion Subsidy of Rs.49,253,755 to the company in the month of November 2010. Copy of the order from the Joint Commissioner (CT), MOU Cell, Chennai determining the amount of Rs.4,92,53,735/- as refund in accordance with G O (MS) No.60 (CT and R) and (MS) No.80 is enclosed as Annexure I.

In this connection, we wish to submit that the Input & Output VAT is not passed through the P&L Account but accounted as a Balance Sheet item. The company has neither debited the VAT in the P&L Account nor has claimed the VAT for income tax purposes. As per the scheme, the VAT amount paid has been refunded to the company and hence it is not chargeable to tax."

7.1 However, the Assessing Officer has not accepted the above reply of the assessee and observed that since the industrial unit of assessee in Tamilnadu was functioning for the last many years already at the time of this grant of subsidy, this subsidy was not granted for setting up of the business. Since purpose of giving subsidy was to assist in carrying out business operations, it is revenue receipt as held in DCIT Vs A P State Electricity Board (ITAT, Hyd TM) 130 ITD I. Decision of CIT Vs Rassi

Cements Ltd (AP 351 ITR 169) and Brakes India Limited VS JCIT Madras) 363 ITR 13 also supports this view. In the earlier years the waiver of commercial taxes was given. Accordingly the assessee did not remit any taxes to the state government. The tax collected by it was offered to tax. Thus in this case, the VAT collected and remitted by it to the government is returned as subsidy. Either this should be returned to the customers or the same should be offered to tax. Based on the above discussion, the Assessing Officer treated the subsidy received amounting to ₹.4,92,53,755/- as revenue and added back to the total income. On appeal, by considering the submissions of the assessee as well as various decisions, the ld. CIT(A) has directed the Assessing Officer to delete the addition of ₹.4,92,53,755/-.

7.2 The ld. CIT(A), by following the decision of the Hon'ble Supreme Court in the case of CIT v. Shree Balaji Alloys [2017] 80 taxmann.com 239 (SC) and the decision of the ITAT in the case of DCIT v. Regen Powertech Limited [2016] 73 taxmann.com 370, directed the Assessing Officer to delete the addition by considering that investment promotion subsidy received by the assessee is capital in nature.

7.3 Aggrieved, the Revenue is in appeal before the Tribunal. The ld. DR has submitted that the subsidy received by the assessee depend

upon the VAT amount paid and it is not a capital receipt and it is only revenue receipt, for which, he relied on the judgement of the Hon'ble Madras High Court in the case of Bakes India Limited v. JCIT 363 ITR 13 (Mad).

7.4 On the other hand, the ld. Counsel for the assessee has submitted that whether the subsidy received by the assessee is revenue or not has to be decided based on the policy of the Government. The Government of Tamil Nadu vide G.O.Ms. No. 43 dated 13.12.1992 is very clear that an industry set up anywhere in Tamil Nadu having an investment of ₹.300 crores and above will be eligible for sales tax waiver up to 7 years. The investment of the assessee was more than ₹.300 crores and thus, the receipt should be capital receipt and not revenue receipt. He strongly relied on the judgement of the Hon'ble Supreme Court in the case of CIT v. Shree Balaji Alloys [2017] 80 taxmann.com 239 (SC). He also relied on the following case law:

1. Banco Products (I) Ltd. v. DCIT 379 ITR 1 (Guj)
2. ACIT v. Genus Electrotech Limited in ITA No. 9513/Del/2019 & ors.
3. Sasisri Extractions Ltd. v. ACIT 119 TTJ 976 (Viz)
4. Indo Rama Synthetics (I) Ltd. v. ACIT 0 33 CCH 526 (Del - Trib)
5. PCIT v. M/s. Welspun Steels Ltd. 264 Taxman 252 (Bom)
6. PCIT v. Budge Budge Refineries Ltd. 139 Taxman.com 124 (Cal)

7.5 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The written

submissions filed by the assessee before the ld. CIT(A) are reproduced as under:

"4.1 During the previous year relevant to the above assessment year, the Appellant had received investment promotion subsidy amounting to Rs.4,92,53,755 from Govt. Of Tamil Nadu for investments made in the State. As the subsidy received was in the nature of promoter's contribution, the Appellant had added the same to Capital Reserves under the head Reserves & Surplus. However, the Assessing Officer disregarded the contentions of the Appellant and added the subsidy treating it as revenue receipt. In this connection, we submit as under:

4.2 The company had set up its first Float Glass factory at Sriperumbudur, Tamilnadu in the year 1999 and commenced commercial production from the year 2000. In the year 1991, the Government of Tamil Nadu vide G.O.Ms.No.323 dated 18.08.1991 had introduced special incentives to accelerate mega investments in the State. The State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT) was the implementing agency for the above scheme and the companies would have to enter into a Memorandum of Understanding with the Government of Tamil Nadu.

4.3 As part of the above, the Government vide G.O.Ms. No. 43 dated 13.12.1992, provided different package of incentives based on the investments made. The special incentives were provided to boost mega investments in the state. As per the above G.O., an industry set up anywhere in Tamil Nadu having an investment of Rs.300 Crores and above will be eligible for sales tax waiver up to 7 years. The assessee's investments was more than Rs.300 crores and hence SIPCOT, an undertaking of Government of Tamil Nadu State, the nodal agency and Commercial Tax Department, Tamil Nadu issued required orders/ certificates granting sales tax waiver for 7 years from Sep 2000 to Aug 2007.

4.4 When Value Added tax System (VAT) was introduced in Tamil Nadu from January 2007, all the Companies to whom Sales tax Waiver Scheme was granted, were required to collect VAT and CST and remit to the Government. The companies who had executed MOUs requested the Government to issue notification to enable them to get ret refund/soft loan against the taxes paid by them for the period from January 2007 till the end of the period of eligibility. Accordingly, the Government of Tamil Nadu vide G.O.Ms.No. 80 dated 26.03.2008 ordered that "to make the existing scheme of incentives to the industry compatible with VAT regime, wherever, the unit was availing exemption/waiver, the unit would be paid Investment Promotion Subsidy equivalent to the amount of Sales Tax paid during unutilized portion of the waiver period.

4.5 In accordance with the above, the Government of Tamil Nadu through SIPCOT paid Investment Promotion Subsidy of Rs.4,92,53,755 to the

Appellant in the FY 2010-11. Since this is for the setting up of the factory and promote investments, it is in the nature o capital receipt.

4.6 We wish to submit that the above subsidy was given as part of the mega investment scheme to encourage investment in the state. The subsidy is towards investment made and is capital in nature and hence the Appellant credited the same to the Reserves account in accordance with the Accounting Standards issued by the Institute of Chartered Accountants of India.

4. 7 We also submit that the subsidy has been received towards the promoter's contribution i.e they have been given With reference to the investments made in the undertaking or in other words it is 'towards the capital outlay made by the Appellant and hence it has been directly credited to the shareholders' funds. The subsidy is not earned but represents incentive provided by the Government and hence it is inappropriate to treat is as revenue income.

4.8 At the outset we wish to submit that the Supreme Court in the case of CIT vs. Ponni Sugars & Chemicals Ltd 306 ITR 392 (SC), has held that where the scheme in question was linked directly to the setting up of a new unit or the expansion of an existing unit. In the above case, the Apex court observed that:

> *"the source of payment or the form in which it the subsidy is paid or the mechanism through which it is paid is immaterial and that what is relevant is the purpose of the assistance"*

Accordingly, it was held that the subsidy received by the assessee is not in the course of a trade but is of a capital nature.

4.9 Subsequently, the Supreme Court in the case of Shree Balaji Alloys & Others vs. CIT [2011] 198 Taxman 122 (Jammu & Kashmir) following its decision in the case of Ponni Sugars (supra) confirmed the decision of the Jammu & Kashmir High Court which held that Excise Refund and Interest Subsidy received in pursuance to the incentives announced and sanctioned pertaining to Industrial Policy introduced in the State of Jammu & Kashmir is a capital receipt in the hands of the assessee and not chargeable to tax.

4.10 Applicability of the above decision to Saint Gobain India Private Limited

Particulars	*Facts of the Assessee-Saint Gobain*	*Facts in the case of Shree Balaji Alloys*
State	*State of Tamil Nadu*	*State of Jammu & Kashmir*
Subsidy	*Investment Promotion Subsidy*	*Excise & Interest Subsidy*
Incentive for	*Accelerated Mega Investments*	*Generation of employment*
Amount received	*Refund of VAT paid*	*Refund of Excise duty paid*

4. 11 In this connection, we also draw your kind attention to the recent decision of the Supreme Court in the case of CIT vs. Chaphalkar Brothers in Civil Appeal Nos. 6513- 6514 of 2012 wherein the Apex Court followed its

decision in the case of Shree Balaji Alloys and Others (supra) and held that as under:

'the object of the grant of the subsidy was in order that persons come forward to construct Multiplex Theatre Complexes, the idea being that exemption from entertainment duty for a period of three years and partial remission for a period of two years should go towards helping the industry to set up such highly capital intensive entertainment centres... the object of the scheme is only one – there is no larger or immediate object. That the object is carried out in a particular manner is irrelevant as has been held in both Ponni Sugar and Sahney Steel.

.....

"We have no hesitation in holding the finding of the Jammu and Kashmir High Court on the facts of the incentive subsidy contained in that case is absolutely correct. In that once the object of the subsidy was to industrialize the State and to generate employment in the state, the fact that the subsidy took a particular form and the fact that it was granted only after commencement of production would make no difference"

4.12 The Chennai Tribunal in the case of DCIT vs. Regen Powertech Limited [2016] 73 taxmann.com 370 relying on the above decisions of the Apex Court, held as under:

> *'We perused the Industrial Investment Promotion Policy referred at page 159 of the paper book which considered the incentives and subsidy provided to the units according to their investments criteria. Further, the facts that VAT subsidy is as per the order issued by the Government and further due to amendment to See. 2(24) (xviii) w.e.f. 01.04.2015 subsidy or a grant defined was made taxable under Income Tax. So, considering the apparent facts, provisions of law, industrial policy regulations, and rely on decision of Shree Balaji Alloys (supra), subsequently Hon'ble Supreme Court has upheld the decision in Civil Appeal No.10061/2011, dated 19.04.2016 by dismissing the Revenue appeal. We respectfully following the Supreme Court decision and direct the ld. Assessing Officer to delete the addition of VAT subsidy as being in the nature of Capital Receipt and it is to be treated accordingly and allow the ground of the assessee'*

4.13 We rely on the decision of the Bombay High Court in the case of CIT vs. Reliance Industries Limited [2010] 8 taxmann.com 208 observed that the object of the subsidy was to encourage the setting up of the industry in the backward area by generating employment therein. Relying on the principles laid down by the Supreme Court in the case of Ponni Sugars (supra), the High Court held that the subsidy is clearly on capital account and not chargeable to tax.

4.14 We also rely on the decision Delhi High Court in the case of CIT v Bougainvillea Multiplex Entertainment Centre Pvt. Ltd, [2015] 55 taxmann.com 26. In the said case, the State Government announced an

> *incentive scheme for persons who set up multiplex theatres. The incentive subsidy was based on 100% of the entertainment tax for the first year and 75% of the entertainment tax for the second and third years; the scheme was then extended for a further period of five years. The subsidy received was sought to be taxed by the Department as revenue receipt, because it was a subsidy on entertainment tax. The Court, applying the "purpose" test laid down in Ponni Sugars and Sahney Steel, observed that the purpose of the subsidy was to encourage-setting up of multiplex theatres within the State and not to aid theatres in making more profits. Consequently, the receipt was held to be capital in nature.*
>
> *4.15 We submit that in the present case, the G..O. No.43 clearly states that the incentive is given to boost mega investments in the State. In addition, GO 80 dated 26-3-2008 also states that the incentive is given towards Investment Promotion Subsidy. This further goes to prove that the incentive is towards setting up of industry and is a capital receipt."*

7.6 The ld. CIT(A), by considering the above submissions of the assessee and following case law, has observed and held as under:

> *I have considered the findings of the AO as per the assessment order as well as the written submission of the appellant. During the appellate proceedings, the AR submitted that %the subsidy is towards investment promotion and providing employment opportunities in the State and is a capital receipt. The AR's submission that the issue is squarely covered by the decision of the Supreme Court in the case of Shree Bataji Alloys 198 Taxman 122 and the decision of the Hon'ble ITAT in the case of DCIT u. Regen Powertech Limited [2016] 73 taxmann.com 370 is considered. Respectfully following the decision of the Apex Court in the case of Shree Balaji Alloys and the jurisdictional Tribunal decision in the case of DCIT v. Regen Powertech Limited [2016] 73 taxmann.com 370, the AO is directed to delete the addition of Rs.4,92,53,755/-. Accordingly, this ground of appeal is allowed.*

7.7 We find that the Hon'ble Supreme Court in the case of Shree Balaji Alloys (supra), by considering its own judgement in the case of CIT v. Ponni Sugars & Chemicals Ltd. (supra), dismissed the appeal of the Department and upheld the judgement of Hon'ble High Court of Jammu & Kashmir in the case of Shree Balaji Alloys & Others v. CIT, wherein, the Hon'ble High Court has held Excise refund and interest subsidy received

by the assessee in pursuance to the incentives announced and sanctioned are capital receipts.

7.8 In view of the above judgement of the Hon'ble Supreme Court in the case of CIT v. Shree Balaji Alloys (supra), we find that the subsidy received by the assessee has close proximity with the industrial policy of the Government of Tamil Nadu as notified vide GO No. 43 and in addition, GO No. 80 also states that the incentive is given towards Investment Promotion Subsidy. Therefore, the incentive subsidy has to be considered as capital receipt.

8. In so far as case law relied on by the ld. DR in the case of Brakes India Limited v. JCIT (supra), the Hon'ble Madras High Court has considered one more material fact in that case that the amount received as subsidy was credited to Power and Fuel Account and not towards capital account. This makes it very clear that the assessee has treated the subsidy as revenue receipt and not for setting up of new industry, but for day to day operations. However, in the present case, the assessee has invested more than ₹.300 crores in pursuance of GO issued by the Tamil Nadu Government and therefore, the subsidy received by the assessee has close proximity with the State Government policy.

Therefore, the case law relied on by the ld. DR in the case of Brakes India Limited v. JCIT (supra) has no application the facts of the present case.

9. In view of the above, we find no reason to interfere with the order passed by the ld. CIT(A) and thus, the ground raised by the Revenue is dismissed.

10. In the result, the appeal in ITA No. 581/Chny/2021 is partly allowed for statistical purposes and appeal in ITA No. 585/Chny/2021 is dismissed.

Order pronounced on the 20th December, 2023 at Chennai.

Sd/-	Sd/-
(MANOJ KUMAR AGGARWAL)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 20.12.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1.अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3.आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.