

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. 241/Ind/2023**  
**(Assessment Year: 2012-13)**

M/s. M.B Industries Private Ltd. Plot No.27 & 33, Sector-A, Sanwer Road, Industrial Area, Indore	Vs.	ACIT 3(1) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: ACHPP2073R</b>		
Assessee by	Shri A.K. Garg & Arpit Gaur, ARs	
Revenue by	Shri Harshit Bari, Sr. DR	
Date of Hearing	31.10.2023	
Date of Pronouncement	19.12.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the Assessee is directed against the order dated 25.04.2023 of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre Delhi for Assessment Year 2012-13. The assessee has raised following grounds of appeal:

*“1. That, the learned CIT(A) grossly erred, both on facts and in law, in upholding the action of the AO in making addition of Rs.25,12,991/-,*

*which is quite unjustified, unwarranted, excessive, arbitrary and bad-in-law.*

*2a). That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the Id. AO in treating the capital grant-in-aid of Rs.25,00,000/- as revenue receipt, without properly appreciating the facts of the case and without considering the material fact that the subsidy was received by the appellant during the relevant previous year from Ministry of Food Processing of India, Government of India, on account of capital investment.*

*2b). That, the learned CIT(A) grossly erred, both on facts and in law, in not appreciating the appellant's submission to the effect that the Id. same AO who passed the subject assessment order, while subsequently framing the regular assessment under s.143(3) of the Act in the case of the appellant company for the immediately succeeding assessment year i.e. A.Y. 2013-14, has duly considered and allowed the second installment of Rs.25,00,000/- as in the nature of capital receipt itself and therefore, there was no occasion for the authorities below to classify and assess the first installment of the same subsidy as that of revenue in the nature.*

*2c). That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the Id. AO in treating the first installment of the total subsidy of Rs.50,00,000/- as that of revenue in the nature, without considering the settled position of the law as propounded by the Hon'ble Supreme Court in the case of CIT vs. Ponni Sugars & Chemicals Ltd. & Ors. (2008) 306 ITR 392 (SC).*

*3. That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.12,991/- in the appellant's income, by making disallowance u/s. 14A of the Income-Tax Act, 1961 out of the interest claimed by the appellant..”*

2. Ground no.1 & 2 are regarding the addition made by the AO on account of grant-in-aid of Rs.25,00,000/- received by the assessee from Ministry of Food Processing Industries Government of India by treating the same as revenue in nature. The assessee company is engaged in the business of manufacturing of Biscuits on job work basis from Parle Product Pvt. ltd. In the earlier years the assessee has installed certain Plant and Machinery for

expansion of its food processing unit manufacturing Biscuits. During the year under consideration the Ministry of Food Processing Industries, Government of India has sanctioned grant-in-aid to the assessee of Rs.50 lakhs for meeting its cost of expansion of food processing Unit. The first instalment of 50% amounting to Rs.25 lakhs was received by the assessee during the year under consideration which was claimed by the assessee as capital receipt being reimbursement of the cost of expansion of the plant. The AO has denied the claim of the said grant-in-aid as capital receipt but assessed the sanction as revenue receipt and made the addition of the said amount of Rs.25 lakhs. The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

3. Before the tribunal the Ld. AR of the assessee has submitted that the AO has denied the claim of the assessee on the ground that the assessee has incurred only Rs.8,06,786/- during the year under consideration as against subsidy of Rs.25 lacs and therefore, the AO has held that the assessee has not incurred the expenditure towards the plant and machinery of its expenditure till the end of the relevant previous year as required under the scheme of grant-in-aid of Ministry of Food Processing Industries, Government of India. Ld. AR has pointed out that the assessee has incurred much higher sum aggregate to Rs.4,89,65,171/- towards plant and machinery of its expansion till the end of the relevant previous year.

Since the machinery expenditure was incurred in the earlier years and only a sum of Rs.8,06,786/- was incurred by the assessee during the relevant previous year therefore, the AO has considered only said amount as expenditure incurred by the assessee towards the expansion of the unit. He has further submitted that even as per the sanction letter this amount of Rs.25 lakhs was granted and paid as reimbursement of the expenditure already incurred by the assessee. The assessee has produced entire bills and vouchers before the AO in support of the expenditure. However, the AO did not consider bills and vouchers and given the reasons that the assessee has not produced the relevant evidence in support of the expenditure. He has further submitted that the Ministries of Food Processing Industry, Government of India has released total amount of Rs.50 lakhs in two instalments of the 50% each to the assessee out of which first instalment was received during the year under consideration and second was received during the next assessment year i.e. 2013-14. The AO while passing the assessment order u/s 143(3) for A.Y.2013-14 has allowed this claim of subsidy as capital receipt towards reimbursement of the cost of expenditure of the unit. Thus, the disallowance made by the AO for the year under consideration is contrary to the record and unjustified. He has also referred to the reply filed by the assessee before the AO and submitted that the assessee has explained each and every facts and details before the AO and also explained that the amount was released by the Ministry as reimbursement of expenditure already

incurred at the time of sanctioning grant-in-aid. The Ministry has already verified the expenditure incurred by the assessee from the audited books of account of the assessee. Thus, the Ld. AR has submitted that once the Ministry was satisfied with the expenditure incurred by the assessee and the grant-in-aid was released only for the reimbursement of the expenditure incurred on the expansion of the unit then character of the said amount cannot be changed as revenue. It was paid as reimbursement of capital expenditure. Ld. AR has also referred to the provision of section 2(24)(xviii) r.w. explanation (10) to clause(1) of section 43 and submitted that the assessee has duly reduced the said amount of grant-in-aid received from the written down value of the fixed assets and therefore, the sanction cannot be treated as revenue receipt. He has further submitted that the AO allowed the second instalment of grant-in-aid in subsequent assessment year 2013-14 and there is no proceedings u/s 263 or 147 initiated by the department.

4. On the other hand, Ld. DR has submitted that the assessee has failed to comply with the instructions of the AO for furnishing of complete bills and vouchers in respect of the expenditure incurred therefore, the AO has treated the grant-in-aid as revenue receipt. Ld. DR has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. The AO has issued show cause notice u/s 142(1) dated 20.02.2015 as under:

“To

*Principal Officer.*

*M/s M.B. Industries Pvt. Ltd.*

*27&33. Sector-A, Sanwer Road, Indore*

*Sub:- Questionnaire u/s 142(1) of the IT Act Assessment Year 2012-13-reg.*

*In connection with the pending assessment proceedings for the assessment year 2012-13. you are required to furnish in writing and verified in the prescribed manner information called for as per points or matters specified below before me at my office at 3rd Floor Room No. 306, Aayakar Bhawan, Opp. White Church, Indore on or before 27/02/2014 at 11:30 AM.*

*1. You have furnished a subsidy document vide F.No.7-86/09-CBP dated 25/04/2011 reflecting Rs.25lac received by you as grants-in-aid and as per para 2(b) of the said grant-in-aid, this grant-in-aid is reimbursement to the expenditure already incurred by the company. Hence furnish the head wise details of the expenditure so incurred relatable to the grants-in-aid so received alongwith relevant bills and vouchers thereof. Also furnish relevant ledger of the expenditure so incurred.*

*2. As per para 2a of the said grant-in-aid the grantee should execute a bond with two sureties to the president. Furnish the copy of the bond executed by you to fulfill the conditions pertaining to the grants-in-aid.*

*3. As requested therein you have to submit the required documents to the concerned bank branch with an undertaking to comply with all the conditions governing the sanction of the grant-in-aid. Hence furnish the copy of documents so produced before the concerned bank to avail the grants-in-aid.”*

5.1 Thus, the AO asked the assessee to furnish head wise details of the expenditure incurred in respect of the expansion of the plant for which grant-in-aid was received by the assessee with relevant bills and vouchers along with other documents as submitted by the assessee with the ministry at the time sanction of grant-in-aid comprising of guarantee bond as well as bank account statements.

In response the assessee has explained that the entire expenditure relating to grant-in-aid received from the Ministry of Food Processing Industries has been incurred by the assessee towards its plant and machinery. The assessee has produced ledger accounts as well as bills and vouchers stated in reply as reproduced by the AO in para 4.4 of the assessment order as under:

*“4.4 In response to the said query the assessee vide its reply dated 27/2 /2011 conformed replied as under:- 'In this context, it is submitted that the entire expenditure relating to grant in aid received by it from the Ministry of Food Processing Industries, Government of India has been incurred by the assessee upon its plant & Machineries. In support of the same, we are furnishing herewith a copy of relevant ledger account as Annexure G-1.00. Since, the bills and vouchers in support of the capital expenditure incurred are quite voluminous, we are producing the same before your good self for necessary verification.'*

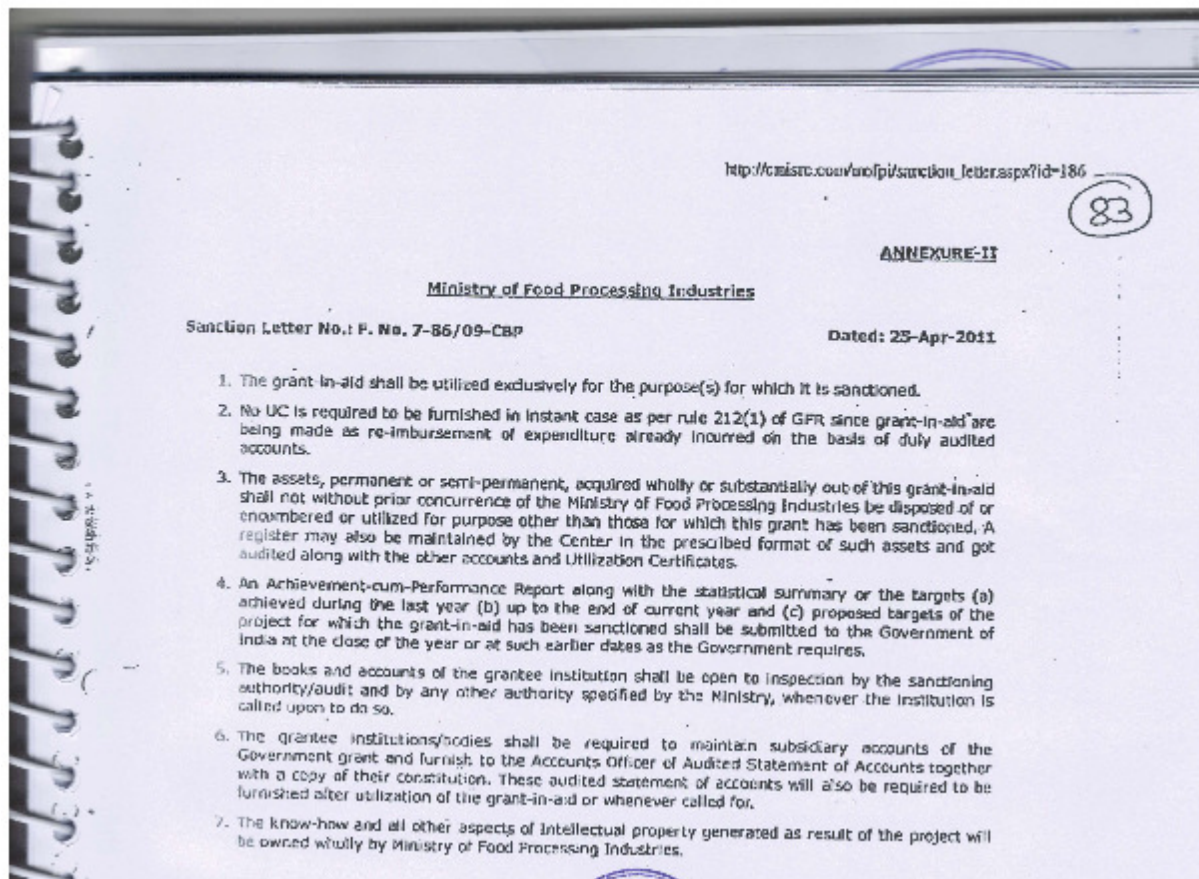
*In support of its claim the Ledger account of 'Plant and Machinery' for the F.Y. 2011 - 12 was also furnished. In the interest of clarity the same is reproduced as below:-  
xxxxxxxxxx*

5.2 The AO has disallowed the claim of the assessee on the ground that the assessee has not produced supporting bills and vouchers and further only sum of rs.8,06,786/- was incurred by the assessee as per ledger account of plant and machinery for the year under consideration. The relevant finding of the AO is given in para 4.5 as under:

*“4.5 Taking Bird's eye view on the above mentioned ledger of 'Plant & Machinery Account' it establishes that the assessee has incurred only Rs.8,06,786/- under the head 'Machinery Account' instead of Rs.25lac. Further, despite availing adequate opportunity the assessee has failed to produce any details as regards the expenditure incurred under the 'Plant and Machinery' A/c. Neither any bills and vouchers in support of its claim has been submitted. Further, as per para 3 of the grants-in-aid the said expenditure has to be incurred during the F.Y.2011-12 under the head as mentioned therein but the assessee has not done so. As the assessee has failed to comply the instructions mentioned in the grants-in-aid dated 25/04/2011. Hence, grants-in-aid so received is treated as revenue receipt during the year and added to the income of the assessee. I am satisfied that the assessee has furnished inaccurate particulars of its income by not treating the subsidy as per the instructions laid down in grants-in-aid, by doing so has attracted the provisions of section 271(1)(c) of the Act. Accordingly, penalty proceedings u/s 271(1)(c) of the Act is initiated on this issue separately.”*

5.3 As it is evident from the reply reproduced by the AO that the assessee has stated that it produced voluminous bills and vouchers in support of the capital expenditure incurred before the AO for necessary verification whereas the AO has considered only ledger account and raised the objection that assessee failed to comply with the instruction made in grant-in-aid as well as failed to furnish evident in support of the claim. This observation of the AO is contrary to the reply itself which is reproduced in para 4.4 of assessment order.

5.4. We further note that as per letter of grant-in-aid Ministry has clearly stated that this amount has been released against the reimbursement of the expenditure already incurred by the assessee as it was verified from the audited accounts. The relevant part of the grant-in-aid letter as per Annexure -2 placed at page 83 of paper book is reproduced as under:



Thus it is specifically stated that the grant-in-aid shall be utilized exclusively for the purpose for which it is sanctioned. No Utilization Certificate(UC) is required to be furnished in instant case as per Rule 212(1) of GFR since grant-in-aid are being made as reimbursement of expenditure already incurred on the basis of duly

audited accounts. The assessee has also explained before authorities below that the expenditure was already incurred for more than Rs.4,81,58,385/- out of which a sum of Rs.4,89,65,171/- was claimed to be eligible for grant-in-aid from Ministry of Food Processing Industries. This expenditure was already incurred in the earlier years and only sum of Rs.8,06,786/- was incurred during the year under consideration. Thus, the disallowance made by the AO by considering incorrect fact and rather taking incomplete facts is highly unjustified. Even as per ledger account as reproduced by the AO in the assessment order opening balance of Rs.4,81,58,385/- is shown and the assessee has claimed that it was incurred in the earlier year. This fact is also corroborated by Annexure -2 of sanction letter of grant-in-aid dated 25<sup>th</sup> April 2011 as reproduced in the forgoing part. Thus, when the Ministry of Food Processing Industries has acknowledged the expenditure and released amount of grant-in-aid as reimbursement of the expenditure already incurred then in the absence of any contrary facts or material on record there is no reason for the AO to doubt the expenditure incurred by the assessee. Further the AO for the A.Y.2013-14 vide order dated 29.01.2016 passed u/s 143(3) has accepted this claim as capital receipt in para 2 of the assessment order for A.Y.2013-14 the AO has stated as under:

*“2. In response to the notices so issued, AR of the assessee Shri Arpit Gaur, CA appeared time to time and filed written submissions the same were placed on record. Books of account alongwith relevant Bills & Vouchers were produced which were test checked. The case was discussed with him. After*

*discussions with the AR of the assessee, the assessment is finalized as under:”*

5.4 The AO has not doubted the claim of the grant-in-aid as received second instalment for F.Y.2012-13 relevant to A.Y.2013-14 based on the same facts of expenditure already incurred by the assessee. There is no dispute that grant-in-aid in question is in the form of reimbursement of the cost of asset and duly taken in the account in accordance with provisions of explanation (10) to clause(1) of section 43 of the Act. At this point it is appropriate to refer section 2(24)(xviii) of the Act inserted vide Finance Act 2015 as under:

*“2(24) Income includes*

*(i) Xxxx*

*xxxxxxx*

*(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee [other than,-*

*(a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or*

*(b) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be;]*

5.5 The above clause is applicable w.e.f. 01.04.2016 and under this amended provisions the Government incentive towards reimbursement of cost of asset is excluded from the income if the condition in sub-clause (a) or (b) are satisfied.

The assessee has also reduced the amount of grant-in-aid from the written down value of the fixed asset and therefore, the same would fall in the exclusion sub-clause (a) of section 2(24)(xviii) of the Act. Accordingly in the facts and circumstances of the case grant-in-aid received as reimbursement of the expenditure on modernization/expansion of the plant and machinery/manufacturing facility of the assessee is capital in nature as held by the Hon'ble Supreme Court in case of CIT vs. Ponni Sugars & Chemicals Ltd. & Ors 306 ITR 392 has relied upon by the Ld. AR in para 14, 15 & 17 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*



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

Order pronounced in the open court on 19.12.2023.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 19.12.2023**

**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*