

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

ITA NO. 3863/MUM/2023 (A.Y: 2002-03)

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE – 1(4) 902, Pratishta Bhavan Old CGO Complex, M.K. Road Churchgate, Mumbai - 400020	v.	Grasim Industries Limited A Wing, 2nd Floor Aditya Birla Centre S.K. Ahire Marg, Worli Mumbai - 400030 PAN: AAACG4464B
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Yogesh Thar & Shri Karan Jain
Department Represented by	:	Shri Dr. Kishor Dhule
Date of conclusion of Hearing	:	08.05.2024
Date of Pronouncement	:	10.05.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal by the revenue is preferred against order of the Learned Commissioner of Income-Tax (Appeals)-47, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 07.08.2023 pertaining to A.Y.2002-03.

2. The solitary grievance of the revenue relates to the treatment of subsidy as capital receipt and not revenue receipt and exclusion of sales tax subsidy while computing book profits under section 115JB of Income-tax Act, 1961 (in short "Act").

3. Having heard the rival submissions, we have carefully perused the orders of the authorities below. The entire quarrel revolves around the Sales Tax New incentive scheme for Industries, 1989 by which the scheme exempts the industrial unit from payment of tax on the sales made in the course of inter-state trade or commerce of the goods including by-products and waste items manufactured by them within the state and in case of packing material used therewith. The benefit is available only if it is linked with fixed capital investment. The objective of the scheme is to boost up the industrial development in the State of Rajasthan and the scheme is applicable to new industrial unit / units undertaking expansion or diversification. The quantum of exemption is 75% of total tax liability.

4. The assessee was also eligible for the sales tax exemption under the scheme of Madhya Pradesh Government for the unit at Mallanpur, Madhya Pradesh and also for package scheme of incentives at its unit

Salav, Maharashtra and also for its unit at Grasim Cement, Raipur. The assessee also claimed exemption for its unit at Haryana, Tamilnadu, Gujarat and Bathinda.

5. The claim was denied and the sales tax subsidy was treated as revenue receipt by the Assessing Officer.

6. We find that in all previous assessment years the Coordinate Bench has been taking a consistent view in favour of assessee and against the revenue and treating the subsidy as capital receipt. The Coordinate Bench in its consolidated order dated 29.04.2022 in ITA Nos. 2155, 2156, 2165, 2154 & 2157/MUM/2016 for the A.Y.1996-97 to A.Y. 2000-01 has decided this issue in favour of assessee and against the revenue. The same was followed in ITA Nos. 1736 & 1834/Mum/2021 for the A.Y. 2001-02, ITA Nos. 3439 & 4337/MUM/2005 for the A.Y. 2004-05 and ITA No. 3517 & 2854/MUM/2006 for the A.Y.2005-06. The Coordinate Bench in its consolidated order dated 29.04.2022 while considering other decisions relied upon the decision of the Hon'ble Jurisdictional High Court of Bombay. The relevant findings read as under: -

"5.5 Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of PCIT vs. Welspun Steel Ltd., reported in 264 Taxman 252. The relevant question raised before the Hon'ble Jurisdictional High Court is as under:- —

"(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that subsidy cannot be considered as payment directly or indirectly to meet any portion of the actual cost ignoring the fact that if the assessee claims the same as capital receipt, the same shall be reduced from the cost of asset and depreciation claim should be on the net value/cost of the asset after reducing the amount of incentives in terms of Explanation 10 to Section 43(1) of the Act?"

5.5.1. This question has been answered by the Hon'ble Jurisdictional High Court in the following manner:-

9. The second question raised by the Revenue is consequent of the first question, in which, the Revenue argues that, if the subsidy is treated as a capital in nature, the same must bring down assessee's costs of acquisition of plant and machinery. The assessee's claim of depreciation to that extent must shrink. Assessee argues that, the Tribunal correctly held that, the subsidy had not been given in relation to acquisition of plant or machinery and that, therefore, same cannot be adjusted towards cost of acquisition.

10. It is undoubted that, the subsidy had no relation to the assessee's acquisition of plant or machinery. It was to be granted to an industry which had set up the new industrial unit in the District of Kutch. In such back-ground, question - arises whether such subsidy would be adjustable towards assessee's costs of acquisition of capital assets. We may notice that, a similar question was considered by Division Bench of Gujarat High Court in case of CIT v. Grace Paper Industries (P.) Ltd. [1990] 183 ITR 591/52 Taxman 18. The Court noted that, the subsidy was granted by the Government for development of industries in back-ward areas. It was not part of the actual cost of plant or machinery. The Court, therefore, held that it could not have been deducted towards costs of acquisition. The Court held as under:—

"We have carefully considered the provisions relating to the grant of cash subsidy under the

schemes framed by the Central Government and the State Government. The Central Government as well as the State Government noticed that areas specified as backward areas and tribal areas were undeveloped or underdeveloped. Entrepreneurs were not willing to set up industries in such undeveloped or under-developed areas. The industries were concentrating only in urban areas. In other words, rapid urbanization was taking place. So far as the State of Gujarat is concerned, there was rapid industrial growth in cities like Baroda, Ahmedabad and Surat resulting in strain on municipal services. Urbanization created several problems such as pollution, growth of slums etc . It was also necessary to have balanced growth of industry in different regions. However, as pointed out above, entrepreneurs were reluctant to set up industries in backward areas. These areas were identified as backward because there was un-development or underdevelopment of industries in these areas. It was, therefore, that the Government decided to give financial incentives to encourage and induce entrepreneurs to move to backward areas and establish industries there so that the region may develop and promote the welfare of the people living in that region. One of the incentives which the Government decided to grant was cash subsidy so that entrepreneurs could utilize such cash subsidy for any purpose connected with the establishment of industries in the backward areas. Once the decision to give cash subsidy was taken, the Government had to work out some method to determine the quantum of such subsidy. In other words, the question as to how the amount of cash subsidy should be determined had to be considered by the Government. The Government, in order to determine the amount of cash subsidy, decided to follow one of the recognized methods of working it out on the basis of the amount invested by an entrepreneurs in acquiring capital assets as cash subsidy. The scheme does not say as to in what manner the subsidy was granted is to be utilized. In other words, the entrepreneur to whom the subsidy was granted was free to utilize it in any manner he liked. It would, therefore, appear that quantification of subsidy on the basis of investment was a measure adopted by the

Government for convenience to work out the subsidy. If subsidy could be utilized by the entrepreneur in any manner he liked, could it be said that it was granted for meeting the cost of the capital assets? In our opinion, taking an overall view of the various provisions of the scheme, it is difficult to hold that cash subsidy was granted to entrepreneur to meet the cost of the fixed assets or part thereof. The cost of the fixed assets was merely adopted as a measure for working out subsidy. In fact, a careful examination of the scheme reveals that it is the value of the fixed assets and not its cost which is adopted as the basis for computing the amount of the subsidy. Emphasis on value and not the cost is evident from the fact that land and building already owned by an industrial unit, cost of tools, jigs, dies and moulds, transport charges, insurance premium, erection cost, value of second-hand machinery purchased by an industrial unit etc. were to be taken into account while computing the value of fixed assets for the purposes of subsidy. In other words, it was the value of the fixed assets which formed the basis for computation of subsidy to be granted under the scheme. Subsidy, in our opinion, did not meet the cost of the fixed assets directly or indirectly. Under the scheme of the Central Government or the scheme of the State Government, cash subsidy was quantified by determining the same at a specified percentage of the value/ cost of the fixed assets. Therefore, as observed above, the basis adopted for determining the cash subsidy with reference to the cost or value of fixed assets was only a measure for quantifying the subsidy and it could not be said that the subsidy was given for the specific purpose of meeting any portion of the cost of the fixed assets. The subsidy was granted to compensate the entrepreneur for the hardship and inconvenience which he might encounter while setting up industries in backward areas."

11. Similar issue came up for consideration again before the Gujarat High Court in CIT v. Swastik Sanitary Works Ltd. [2006] 286 ITR 544. It was a case in which, the Government subsidy was intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries. In such a case, specified percentage

of the fixed capital cost, which was the basis for determining the subsidy, would be granted. The Court held that, such basis for determining the subsidy was only a measure adopted under the scheme to quantify the financial aid and it was not a payment, directly or indirectly to meet any portion of the actual cost of acquisition of capital asset. It was held and observed as under:—

'In so far as question No.2 is concerned, this court finds that the same is squarely covered by the decision of the Supreme Court in CIT v. P. J. Chemicals Ltd., [1994] 210 ITR 830. In the said case, after review of the law on the point, the Supreme Court has held as under (head note):

"Where Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the 'actual cost'. The expression 'actual cost' in section 43(1) of the Income Tax Act, 1961, needs to be interpreted liberally. Such a subsidy does not partake of the incidents which attract the conditions for its deductibility from 'actual cost'. The amount of subsidy is not to be deducted from the 'actual cost' under section 43(1) for the purpose of calculation of depreciation etc."

No question of law, therefore, arises in this respect

5.5.2. Respectfully following the same, we hold that the provisions of Explanation 10 to Section 43(1) of the Act would not be applicable in the facts and circumstances of the case and accordingly, the alternative ground raised by the Revenue is hereby dismissed.

5.6. In view of the aforesaid detailed observations, we hold that subsidy / incentive received in the instant case by the assessee for all the years under consideration would have to be construed only as a capital receipt not chargeable to tax and the Id. CIT(A) had rightly granted relief to the assessee in this regard by applying the purpose test. Hence, we do not find any infirmity in the order of the Id. CIT(A) for all the years under consideration. Accordingly, the original grounds as well as the additional grounds raised by the Revenue are dismissed."

7. As no distinguishing decision has been brought to our notice, respectfully following the findings of the Coordinate Bench (supra), Ground No. 1 is dismissed.

8. Coming to the issue of MFTJ on the aforementioned subsidy, we find that this Tribunal in ITA No. 1834 and 1736/MUM/2021 for the A.Y.2001-2002 has considered the similar issued and held as under: -

"14. The assessee company by filing cross appeal sought to set aside the impugned findings returned by the Ld. PCIT(A) in not directing the AO to exclude sales tax subsidy being a capital receipt from the profit shown in the statement of profit & loss account while computing the book profit under section 115JB of the Act. This issue has already been decided by the Hon'ble Bombay High Court in case of M/s. Harinagar Sugar Mills Ltd., ITA No.1710 of 2014 dated 3rd April, 2017 (Bombay-HC) and ITA No.1132 of 2014 order dated 4th January, 2016 available at page Nos.191 to 196 of case law paper book wherein following question of law was framed.

"(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in upholding the order of Commissioner of Income Tax (Appeals) in directing the Assessing Officer to delete the addition made to book profits on account of subsidy received by way of excise duty?"

15. Aforesaid question of law has been answered in favour of the assessee by the Hon'ble High Court by returning following findings:

"4. Regarding question no.(ii):- (a) The issue raised in this question is consequential to question no.(i). We have already held that the subsidy received by the respondent-assessee from the State of Bihar was in the nature of capital receipt. Hence the same cannot be added to arrive at book profits of the respondent-assessee under Section 115J of the Act."

16. So in view of the matter, we direct the AO not to add sales tax subsidy received by the assessee, which is in the nature of capital receipt while computing the book profit under section 115JB of the Act.

17. In view of what has been discussed above while upholding the findings returned by Ld. PCIT(A) the appeal filed by the Revenue is hereby dismissed. However, in view of our findings in the preceding paras, appeal filed by the assessee is hereby allowed."

9. Respectfully following the findings of the Coordinate Bench (supra), Ground No. 2 is also dismissed.

10. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 10th May, 2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Mumbai / Dated 10.05.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

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BY ORDER
(Asstt. Registrar)
ITAT, Mum