

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : C : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.4271/Del/2018
Assessment Year: 2013-14

DCIT,
Circle-13(2),
New Delhi.

Vs JMW India Pvt. Ltd.,
309, Vikas Deep Building,
Laxmi Nagar, District Centre,
Delhi. – 110 092.

PAN: AAACJ3260C

(Appellant)

(Respondent)

Assessee by : Shri C.S. Anand, Advocate
Revenue by : Ms Parul Singh, Sr. DR
Date of Hearing : 25.06.2024
Date of Pronouncement : 05.07.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 08.03.2018 of the Commissioner of Income Tax (Appeals)-5, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. Del/CIT(A)-5/0368/2016-17 arising out of the appeal before it against the orders passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the DCIT, Circle-13(2), New Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the record. The ld. DR submitted that the order of the CIT(A) is erroneous as without examining the use of subsidy amount reliance was placed on the judgement of the *Hon'ble Jammu & Kashmir High Court in the case of Shri Balaji Alloys & Others, 333 ITR 335 (J&K)*. It was submitted that the CIT(A) was supposed to examine the question of utilization of the subsidy in the light of the judgement of the Hon'ble Supreme Court in the case of *Ponni Sugars & Chemicals Limited, 306 ITR 392 (SC)*. The ld. AR, however, relied the order of the CIT(A) and submitted that the CIT(A) has not taken into consideration the judgement of the Hon'ble Supreme Court in the case of *Sahney Steel & Press Works Limited vs. CIT (1997) 228 ITR 253 (SC)*.

3. Giving thoughtful consideration to the matter on record and the submissions, it comes up that the assessee company is engaged in the business of trading and manufacturing copper products and the return was taken up for scrutiny and apart from examining the issue of disallowance u/s 14A, a disallowance on unvouched expenses was made for which the assessee came before the CIT(A) wherein, apart from challenging the aforesaid additions, an additional ground was taken that the interest subsidy amounting to Rs.30,01,143/- which was credited to P&L Account for the year under consideration deserves to be treated as the capital receipts in the hands of the assessee in view of the recent decision of the Hon'ble Supreme Court of India dated 19.04.2016 in the case of *CIT, Jammu vs. Shree Balaji Alloys & Others,*

in Civil Appeal No.10061/2011. The CIT(A) had admitted this additional ground in the light of the law laid down with regard to admission of additional grounds by the appellate authority in the judgement of the Hon'ble Supreme Court in the case of *Goetze India Pvt. Ltd. vs. CIT, 284 ITR 323* and in the judgement of the Hon'ble Delhi High Court in the case of *M/s Jai Parabolic Springs Ltd., 306 ITR 42.*

4. Thereupon, the CIT(A) decided this additional ground by following the order at the first appellate stage for AY 2012-13, passed by the predecessor. As we go through the impugned order, we find that no other observation other than following the order for AY 2012-13 are made in the present year. During hearing, it transpired that the Revenue had not challenged the order of the CIT(A) in AY 2012-13. Thus, in a way, the question about the interest subsidy received by the assessee to be treated as capital receipts stands decided in favour of the assessee and the principle of consistency requires following the same.

5. We further find that the CIT(A) in AY 2012-13 had taken into consideration the judgement of the Hon'ble Supreme Court in the cases of *Sahney Steel & Press Works Limited (supra)* and *CIT vs. Ponni Sugars & Chemicals Limited, (2008) 306 ITR 392 (SC)* to benefit the assessee on the basis of the Hon'ble Jammu & Kashmir High Court judgement in the case of *Shree Balaji Alloys & Others (supra)*. We consider it appropriate to reproduce

the relevant paras 4.2 to 4.5 of the order of the CIT(A) for AY 2012-13 as followed in present AY 2013-14 hereinbelow:-

“4.2 Coming to the substantial issue of taxation of subsidies, the issue has been engaging the attention of Courts for the past many years. Subsidy is a grant by the Government, to the promoters of any enterprise, in which the Government desires to participate or which is considered a proper subject for Government aid. Such purpose is likely to be of benefit to the public. Subsidy given to a company for running its business is considered taxable. Grant from the Government after completion of; say, a film is revenue receipt. Subsidy under export promotion schemes, power subsidy, purchase, tax subsidy and sales-tax subsidy have all been considered by various High Courts as revenue receipts taxable, in the hands of the recipient. The leading and landmark case on the subject is that of Sahney Steel & Press Works Ltd. (228 ITR 253) decided by the Supreme Court, in 1997. In a well considered ruling, the apex Court observed that payments from public funds to assist companies in carrying on trade or business are revenue receipts. In that case, refund of sales-tax, subsidies on power consumed and exemption from payment of water charges, etc. were considered by the Court as amounts received by way of production incentives. They were operational subsidies and not capital subsidies. They were, therefore, revenue in nature. The core question involved in this appeal is whether incentives/subsidy as provided in the relevant government scheme are granted to set up the new industry or to purchase capital asset or to purchase machinery or for completion of project. If answer is in affirmative then such fiscal incentives are capital in nature. However, where such incentives conferred, on the recipient or were granted for assisting, in carrying on the business operation more profitably and competitively, on the condition precedent of post commencement of commercial production, then the nature of such incentives would be patently, revenue in nature. In view of this, such receipts would be trade receipt or supplementary receipts and following the fundamental rule of the 'purpose test', as laid down by the Hon'ble Supreme Court, in the case of Sahney Steel & Press Works Ltd. (supra), such receipts can only be revenue receipts. It is essential to highlight that the Hon'ble Supreme Court has, in Sahney Steel & Press Works Ltd. laid down the following fundamental principles, which were followed by the Supreme Court and various High Courts, in subsequent decisions and these fundamental principles were not diluted, in subsequent decisions. These are as under:

- (i) 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.*
- (ii) The source of the fund from which the subsidy is given is immaterial,*
- (iii) The manner in which the subsidy is given is of no consequence.*

(iv) *If the subsidy is given to the assessee to assist him to set up his business or complete a project, it is a capital receipt.*

(v) *If the subsidy is given to the assessee to assist him in carrying on his trade or business, it is a revenue receipt. Thus if the monies are given only after and conditional upon commencement or production such subsidy must be treated as assistance for the purpose of trade or business.*

4.3 In the present case, the admitted facts are that the incentives in the form of excise duty refund and interest subsidy are not given to the assessee for purchasing capital asset or for purchase of machinery or for setting up industrial unit, as the same had already been set up, for last many years. The appellant had also been claiming deduction u/s80IB in respect of its Jammu Unit up to the A.Y. 2010-11. In the assessment year 2010-11, during the course of assessment proceedings, the claim was made by the appellant that the interest subsidy received from Jammu & Kashmir Government was a capital receipt and the amount of Rs. 77,85,723/- was claimed by way of deduction in the total income. The A.O examined the evidences furnished and found that the interest subsidy received from the state government was in fact a reimbursement of the interest cost incurred on the working capital loan taken from banks and financial institution to fund the day to day monetary requirements and not for capital commitments such as purchase of plant and machinery or other such capital outlay. Hence the A.O arrived at the conclusion that year that the purpose and object of the grant of interest subsidy, being linked to the carrying out of the day to day business operations, cannot be claimed as capital receipt. She relied on the Apex Court decision in the case of Goetze (India) Ltd. 284 ITR 323 wherein it had been held that the A.O could not consider a claim for deduction in a situation where the assessee had failed to file the revised return in time. As per the record, the appellant did not file an appeal against the rebuttal of its claim that the interest subsidy was a capital receipt. During the year under consideration the additional fact is that the excise duty leviable on the products manufactured by the company and paid to the government account, in earlier years, stands refunded to the appellant by the state government in order to promote the industrial development in the Jammu and Kashmir region. The admitted facts are, therefore, that excise duty refund and interest subsidy introduced/granted in pursuance of new industrial policy by the state of Jammu and Kashmir was given to existing industrial unit and were not available to the units until and unless commercial production has commenced. It is also admitted fact that the incentives were not given for purchase of capital assets or machinery but to accelerate industrial development, generate employment and thereby serve the public interest.

4.4 The Jammu & Kashmir High Court examined a bunch of appeals before it, in the case of Shree Balaji Alloys and Ors. (333 ITR 335) wherein the exact same incentive scheme was discussed, the Hon'ble High Court took

into the account background of the Cabinet decision for the creation of one lakh employment and self employment opportunities in Jammu & Kashmir and decided to provide fiscal incentives to both new industrial units and substantial expansion of existing units. As per the scheme, the Central Excise exemption would be available only on production of a certificate from the General Manager of the concerned District Industries Centre to the jurisdictional Deputy Commissioner of Central Excise and Asst. Commissioner of Central Excise, as the case may be, to the effect that the unit had created the desired additional regular employment. According to the High Court the true intent and purpose underlying the policy and concessions given by the Central and State Governments was in the eradication of the social problem of unemployment of the State by acceleration of the industrial development and removing backwardness of the area that lagged behind the industrial development, which is certainly a purpose in the public interest.

According to the High Court, this single purpose objective satisfied the purpose test laid down by the Hon'ble Supreme Court in Sahney Steel Case and Ponni Sugars case. The AR has brought to my knowledge that the appeal filed by the revenue against the decision of the Jammu & Kashmir High Court has been dismissed by the Hon'ble Supreme Court (civil appeal no. 10061/2011) in an order dated 19.04.2016.

4.5 Since the facts of the appellant's case had identical to the facts in the case of Shree Balaji Alloys Ltd., the undersigned is bound to respect the decision of the Hon'ble Apex and decide the issue in favour of the appellant. Consequently, grounds nos. 1 to 3 are allowed."

6. After taking into consideration the aforesaid, we find no substance in the attempt of ld. DR to agitate the issue. Consequently, the grounds raised by the Revenue have no substance. The appeal of the Revenue is dismissed.

Order pronounced in the open court on 05.07.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 05th July, 2024.

dk

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi