

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 749/Chd/2023
निर्धारण वर्ष / Assessment Year : 2003-04

The DCIT Circle-1, Ludhiana	बनाम	M/s Vardhman Holdings Limited, (Formerly Known as Vardhman Spg. And Genl. Mills Limited) Chandigarh Road, Ludhiana
स्थायी लेखा सं. / PAN NO: AABCV8088P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Pankaj Gupta, Advocate and
Shri Rishit Dhingra, C.A
राजस्व की ओर से/ Revenue by : Smt. Kusum Banal, CIT, DR
सुनवाई की तारीख/ Date of Hearing : 08/08/2024
उदघोषणा की तारीख/ Date of Pronouncement : 12/08/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Revenue against the order of the Ld. CIT(A)-II, Ludhiana dt. 17/11/2008 pertaining to Assessment Year 2003-04.

2. In the present appeal, the Revenue has raised the following grounds of appeal:

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in treating the reimbursement of interest under TUF scheme of the Ministry of Textiles, Government of India, as capital receipt instead of revenue receipt without giving an opportunity to assessing officer to examine the claim of the assessee.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in treating the reimbursement of interest under TUF scheme of the Ministry of Textiles, Government of India, as capital receipt instead of revenue receipt without examining in the order the character / purpose of the subsidy receipts in the hand of assessee.

3. That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off."

3. At the outset, it is noted that this is second round of appellate proceedings before us. In the first round of appellate proceedings before the

Tribunal, the assessee had raised an additional ground vis a vis treatment of interest reimbursement under Technology Upgradation Fund Scheme (TUFS) whether capital or Revenue in nature for the impugned assessment year. The Coordinate Bench vide its order dt. 26/11/2018 in ITA No. 88/2009 had admitted the additional ground of appeal and restored the issue of treatment of subsidy received of interest under TUFS back to the file of the CIT(A) for adjudicating afresh directing him to pass a speaking order after considering all the facts relating to the scheme and the judicial precedent. In the said background, the Ld. CIT(A) heard the assessee on the issue and vide the impugned order, allowed the assessee's claim of treating the interest reimbursement under the TUFS as capital in nature. Aggrieved with the order of the Ld. CIT(A), the Revenue is in appeal before us.

4. Briefly the facts of the case are that the assessee has paid interest to the bank amounting to Rs. 24,55,51,691/- on term loans raised by it and said interest was debited in the P&L Account of the assessee company. As per the TUF Scheme of the Ministry of Textiles, Government of India, the assessee had received subsidy of Rs. 8,32,78,691/- which was credited in the P&L Account and accordingly brought to tax. It is this TUFS subsidy of Rs. 8.32 Crores which the assessee had claimed to be capital in nature as opposed to the AO treating the same as Revenue in nature and accepting it to tax and which claim of the assessee was upheld by the Ld. CIT(A).

5. During the course of hearing, the Ld. AR for the assessee submitted that this issue had been settled by the Tribunal in favour of the assessee in case of group concern, M/s Vardhman Textiles for assessment years 2002-03 to 2005-06 in ITA Nos.1479 to 1482/Chd/2018 dated 29.5.2019 treating the interest received as capital in nature. It was submitted that the Ld CIT(A) has followed the said decision of the Coordinate Bench while allowing the appeal of the assessee.

Our attention was drawn to paras 10 to 13 of the order dated 29.5.2019 containing the findings of the Coordinate Bench in this regard as under:

"10. We have heard both the parties and have also gone through the order of the Ld.CIT(A). The issue before us relates to the nature of interest subsidy received under the TUF Scheme of the Government of India. The factual findings of the CIT(A) that the purpose of the interest subsidy was upgradation of plant & machinery and thus the capital apparatus of the assessee company, has not been controverted by the Revenue. The Ld.CIT(A), we find, has relied upon the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Sham Lal Bansal, ITA No.472/2010 (P&H) and the decision of the Hon'ble High Court of Calcutta in the case of CIT Vs. Gloster Jute Mills Ltd.(2018) 96 Taxman.com 303 for holding the interest subsidy to be capital in nature.We have gone through the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Sham Lal Bansal(supra),copy of which order was placed before us, and we agree with the Ld.CIT(A) that in the said case also, the issue related to nature of subsidy received under TUF Scheme of the Ministry of Textiles. The Hon'ble High Court , held that for the purpose of determining the nature of the subsidy ,the purpose for which the subsidy was given was to be determined and relied upon the decision of the Hon'ble Supreme Court in the case of Sahni Steel & Press Works Ltd. Vs. CIT (1997) 94 Taxman 368 and CIT Vs. Ponni Sugars & Chemicals Ltd. (2008) 174 Taxman 87 for the aforesaid proposition. Thereafter the Hon'ble High court noted that the purpose of the TUF Scheme was to induce the entrepreneur to undertake investment in modernizing the plant and machinery and was definitely not for the purpose of day to day business of the assessee. Accordingly the Hon'ble High Court held that the nature of the subsidy was capital.

11. In the case of Gloster Jute Mills(supra),copy of order of which was also placed before us, the Hon'ble High Court examined the features of the TUF Scheme and found the purpose was to induce the entrepreneur to undertake investment in modernizing the plant and machinery and assets and, therefore was clearly a capital receipt.

12. The aforesaid two decisions relied upon by the CIT(A), we find therefore, have already dealt with the nature of the subsidy received under TUF Scheme and after analyzing the terms of the scheme and finding that the purpose of the scheme was to induce modernization of plant and machinery used in textile industry ,held the same to be capital in nature following the proposition laid down by the apex court for determining the nature of subsidy in the case of Sawhney steels(supra) and Ponni Sugars(supra). The Ld. DR has been unable to bring to our notice any contrary decision either of the Hon'ble Jurisdictional High Court or the Hon'ble Apex Court on this issue nor was the decisions relied upon by the Ld.CIT(A) distinguished before us.

13. In view of the same, we have no hesitation in upholding the order of the CIT(A) that considering the objective of the TUF Scheme and judicial decisions of the Hon'ble Jurisdictional High Court and Hon'ble High Court of Calcutta , the interest received under TUF Scheme is capital in nature. Grounds of appeal raised by the Revenue are, therefore, dismissed."

6. The Ld. CIT/DR fairly submitted that the issue stood decided in earlier years in favour of the assessee as pointed out by the Ld. Counsel for the assessee in Group Concern. At the same time, she submitted that the Revenue has not accepted the decision of the Tribunal and hence, the present appeal. She relied on the order of the AO.

7. We have heard the rival contentions and pursued the material available on record. Admittedly, the issue of treatment of interest received under TUF Scheme has already been adjudicated by the ITAT in assessee's group concern for assessment years 2002-03 to 2005-06 in ITA Nos.1479 to 1482/Chd/2018 (supra) treating the same as capital receipt. The Id CIT(A) while allowing the appeal of the assessee has followed the said decision. In view of the fact that the said decision of the Coordinate Bench has neither been reversed or stayed by the Higher Courts and no distinguishing facts have been brought to our notice, we have no hesitation in upholding the order of the CIT(A) treating the interest subsidy as capital in nature. Grounds of appeal raised by the Revenue are therefore, dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 12/08/2024

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER
AG

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar