आयकरअपीलीयअधिकरण,'**ए**'न्यायपीठ,चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**'A' BENCH, CHENNAI**

श्री एबीटीवर्की, न्यायिकसदस्यएवंश्री एस. आर.रघुनाथा, लेखा सदस्यके समक्ष

**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./**ITA No.: 437/Chny/2024**
निर्धारणवर्ष / Assessment Year: 2014-15

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| M/s. Hyundai Motor India Limited,<br>Plot No. H-1, SIPCOT Industrial Park,<br>Irungatukottai,<br>SriperumbudurTaluk,<br>Kancheepuram District,<br>Tamil Nadu – 602 117.<br>**[PAN: AAACH-2364-M]** | v. | Deputy Commissioner of Income Tax,<br>Non Corporate Circle – 8(1),<br>Chennai – 600 034. |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

अपीलार्थीकीओरसे/Appellant by : Shri. S.P. Chidambaram, Advocate
प्रत्यर्थीकीओरसे/Respondent by : ShriNilayBaranSom, CIT

सुनवाई की तारीख/Date of Hearing : 06.08.2024
घोषणा की तारीख/Date of Pronouncement : 21.08.2024

## आदेश /O R D E R

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

This appealinstituted by the assessee is against the common order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2014-15 vide order dated 22.12.2023.

2. The sole issue involved in this appeal is as regards to ld.CIT(A) erred in upholding the giving effect order of the Assessing Officer in treating the Investment Promotion Subsidy (IPS) in the form of refund of output VAT amounting to Rs.32,24,91,983/- as a revenue receipt chargeable to tax. The assessee has raised various other grounds on the same issue which are general in nature, argumentative, exhaustive and hence, need not be reproduced.

3. Brief facts of the case are that the assessee, M/s.Hyundai Motor India Ltd., is wholly owned subsidiary of M/s. Hyundai Motor Company Ltd., South Korea. The assessee is engaged in the business of manufacturing and selling passenger cars in domestic and export market. The assessee company has filed its return of income for assessment year 2014-15 on 28.11.2014 admitting total income of Rs.1240,81,74,240/- under normal provisions of the Income Tax Act, 1961, (In Short "the Act") and book profit u/s.115JB of the Act at Rs.2145,05,22,193/-. The assessee had entered into various international transactions with its Associated Enterprises (AEs) and international transactions were duly reported in Form 3CEB filed in accordance with provisions of Indian Transfer Pricing

Regulations contained in section 92, 92A to 92F of the Income Tax Act, 1961. The case was taken up for scrutiny and during the course of assessment proceedings, a reference was made to JCIT (Transfer Pricing) for determination of Arm's Length Price (ALP) of international transactions of the assessee with its AEs. The learned TPO vide its order has suggested certain transfer pricing adjustments towards downward adjustment to the value of imports and upward adjustment for brand development services.

**4.** The Assessing Officer, passed assessment order u/s.143(3) r.w.s.144C(13) of the Income Tax Act, 1961 on 26/09/2018, wherein the income was assessed at Rs.1607,40,87,690/-. The issues carried upto Tribunal and the Tribunal remanded the file to AO with certain directions in its order in ITA 3192/Chny/2017 dated 01.09.2021. In the Order giving effect passed by the AO dated 09/09/2021 and subsequently rectified U/s.154 of the Act on 20/09/2021, pursuant to the order of the Tribunal rejected the claim of the assessee that subsidy of Rs.32,75,60,000/- received from Govt. as capital receipt and taxed it as revenue receipt. Aggrieved, the assessee filed appeal before the Ld.CIT(A) and the appeal was dismissed by rejecting the claim of the assessee to treat

the subsidy received in the form of Output VAT as capital receipt by the Ld.CIT(A) on 12/01/2024 by confirming the order of the AO by holding as under:

> ***"3.5*** *The contention of the assessee is to be seen in the light of the eligibility conditions stipulated by the Govt. for obtaining output VAT refund. As per the Eligibility Certificate issued by SIPCOT on 23/07/2009, the assessee was to become eligible after crossing the so called Base Local Sales Volume [BLSV], i.e. refund of output VAT paid to Govt. on sale of vehicles exceeding the volume of 14300 per annum, within the state of Tamil Nadu. Therefore, if any obligation was placed on assessee to become eligible for the benefit of refund of output VAT then it was sale related obligation. As a matter of fact, the obligation is like a trader providing a scheme to its wholesalers/distributors/retailers of incentive which is based on exceeding the sale over certain fixed volume/value. For this reason alone, the incentive has the character of trade receipt. Examining with other facts like complete absence of any obligation towards utilization of the incentive, complete absence of even any indirect link between the incentive· and the capital assets, complete absence of employment related [including of local people] condition for eligibility ofthe incentive, complete absence of condition related to compulsory sourcing of raw material and other inputs from within the state etc. It is clear that the so called Incentive in the form of refund of output VAT [which was already claimed as an expense] has clearly distinguishable character of revenue receipt provided for* ***running the business more profitably.***
>
> ***3.6*** *Assessee has placed reliance on the Hon'ble Delhi High Court judgement in the case of Nestle India Ltd. It is seen that in that case a small subsidy of Rs.25,00,000/- was given to the assessee for its efforts to establish a new industrial unit in backward area. In the case of HMIL, the claimed investment was towards expansion of industry within Chennai Urban Agglomeration. Therefore, the facts*

*of both the cases are not identical in any manner. As a matter of fact, the judgement in the case of Sahney Steel & Press Works Ltd [by Hon'ble Supreme Court] squarely applies to the facts of the assessee.*

***3.7.** In view of the above described facts, the contention of the assessee is rejected and the issue raised in Col.13 of Form No.35 is decided against the assessee. Accordingly A.O.'s order is upheld.*

*4. In the result, the appeal **is dismissed."***

5. The ld.AR of the assessee has stated that, during the A.Y. 2013-14, the assessee has accrued an Investment Promotion Subsidy ('IPS') of INR 32,75,60,000 based on the sales made and credited to P&L account under 'Other Operating Revenue'. The aforesaid incentive was treated as a revenue receipt in its statutory books and income tax return.During scrutiny assessment proceedings, the Assessee submitted an additional claim that the incentive in the form of Investment Promotion Subsidy (IPS) was received for the purpose of setting up / expansion of Phase II manufacturing facility and as such IPS should be treated as a capital receipt not chargeable to tax. In the draft assessment order, the Assessing Officer ('AO') did not entertain the claim of the Assessee.

6. Further, the Ld.AR stated that the DRP also did not entertain the claim and as such the AO issued the final assessment dated 30 Oct 2017 under section 143(3) r.w.s 144C(13) of the Act rejecting the Assessee's claim.The Ld.AR stated that the Tribunal, while issuing the order in ITA No.3192/Chny/2017 dated 01 Sep 2021 for the subject AY, had remanded the matter back to the file of the AO to decide the taxability of the subsidy in accordance with law.In the remand proceedings, the AO adjudicated on the subsidy issue and held that subsidy is not for the purposes of production or for any capital asset. Even the AO has also given a finding that the Assessee is free to utilize the subsidy for any purpose. With these findings, the AO concluded that the subsidy is a revenue receipt chargeable to tax vide order dated 09/09/2021 giving effect to the ITAT order dated 01/09/2021 read with rectification order dated 20/09/2021 under section 154 r.w.s 254 r.w.s 143(3) of the Act.The CIT(A) vide order dated 12/01/2024 has upheld the order of the AO. Aggrieved against the CIT(A) order, the Assessee has preferred this appeal.

7. The Ld.AR argued that the issue is squarely covered in favour of the Assessee by the decision of this Hon'ble ITAT in

Assessee's own case for A.Y.2012-13 in IT(TP)A No.51/Chny/2021 dated 27/09/2023 wherein at Para No.11.6 it is held that the IPS in the form of VAT subsidy is a capital receipt. The extract of the decision is as under:

> *"11.6…..In the present case, going by the Scheme promoted by the Government of Tamil Nadu, it shows that industrial promotion subsidy has been promoted for encouraging Ultra Mega Integrated Automobile Industry in the state of Tamil Nadu.* ***Therefore, we are of the considered view that from the submissions of the assessee, it appears that IPS accrued to the assessee for the impugned assessment year on the basis of sales is given for setting up/expansion of manufacturing facility and is on capital account. Therefore, said subsidy should be treated as capital receipt.****But, fact remains that complete Scheme of IPS given by the Government of Tamil Nadu and relevant conditions specified therein are not available for our benefit. Further, although, the assessee claims that the Nodal Agency i.e. SIPCOT has quantified and issued final eligibility certificate quantifying the amount of investment in fixed assets and consequent subsidy receivable in the form of IPS, but the details of investment are not forthcoming from certificate issued by the Nodal Agency. Therefore, we are of the considered view that this issue needs to be re-looked into by the AO in light of our discussion given hereinabove and also relevantevidences, including IPS of the Government of Tamil Nadu, details ofinvestment made by the assessee and certificate issued by the NodalAgency i.e. SIPCOT quantifying the amount of investment and subsidyIT(TP)A No.51/Chny/2021receivable in the form of subsidy. Thus, we set aside the issue to the fileof the Assessing Officer for verification.*
>
> *11.7 …… ,we set aside the issue to the file of the AO and direct the AO to re-examine the claim of the assessee in light of provisions of Explanation-10 to Sec.43(1) of the Act, provided thereunder and also by considering IPS Scheme given by the Government of Tamil Nadu and other relevant evidences to ascertain whether the subsidy given by the State Government is to offset portion of the cost of an asset acquired by the assessee or is merely issued with an objective ofaccelerating the industrial development. The AO is further directed to examine the issue in light of our discussions given hereinabove and decide the issue in accordance with law."*
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> *(Emphasis supplied)*

8. The Ld.AR submitted that in principle the issue was decided in favour of the Assessee by holding that the IPS subsidy seems to be granted for the setting up/expansion and therefore it is capital receipt not chargeable to tax. However, for the limited purpose of verification of the complete scheme and whether the subsidy was given to offset any cost of the asset, the matter was remanded to the AO.The Ld.AR further stated that, in the remand proceedings for A.Y.2012-13, after detailed examination, the AO concluded that the claim of the Assessee is accepted that the subsidy accrued is capital receipt not chargeable to tax vide OGE dated 20/02/2024. The extract of the AO's decision is as under:

> *"6. Tax treatment of output VAT Incentives ( Investment Promotion Subsidy)*
>
> *"Considering the submissions made and the details verified, the claim of the Assessee that the Subsidy accrued during the year (IPS) (Rs.33,00,82,506/-) is a capital receipt, not chargeable to tax, is hereby accepted."*

9. In this factual matrix, the Ld.AR submitted that the ITAT order for A.Y. 2012-13 dtd. 27/09/2023 was furnished to the CIT(A) during the appellate proceedings. However, the CIT(A) has not considered the same while issuing his order dated 12/01/2024. Presently, after passing of impugned Ld.CIT(A)

order, the AO has issued the OGE for A.Y.2012-13 on 20/02/2024 after detailed examination wherein he has accepted that the subsidy is a capital receipt not chargeable to tax. While the Tribunal held that the IPS received by the Assessee is a capital receipt vide order in IT(TP)A No.51/Chny/2021 dtd.27/09/2023, the sole reason it has been remanded back is for the limited purpose of factual re-confirmation that whether the subsidy is for the purposes of meeting any cost of assets as per Explanation 10 to section 43(1) of the Act. In the giving effect proceedings, the AO has come to a conclusion that the subsidy is not for the purpose of meeting any cost of the assets and held that it is a capital receipt not chargeable to tax vide OGE dated 20/02/2024.

10. In light of the above, the Ld.AR stated that the issue in the present appeal is squarely covered in favour of the Assessee by the decision of this Hon'ble ITAT in IT (TP) A No.51/Chny/2021 dtd. 27/09/2023 and by the OGE dated 20/02/2024 issued by the AO for the A.Y.2012-13 and prayed for allowing the IPS as capital receipt not chargeable to tax.

11. Per contra, the Ld.DR relied on the orders of the lower authorities.

12. We have heard the rival contentions and perused the orders of the lower authorities and of the Tribunal. It is admitted fact that the assessee company has entered into a MOU with Government of Tamilnadu on 22/01/2008 for setting up / Expansion of its manufacturing facility. As per the said MOU incentive was granted for the purpose of setting up of Phase II manufacturing facility by way of refund of Output VAT under the state policy. After the completion of the project on 31/03/2011, a final eligibility certificate was issued by SIPCOT on 17/04/2014 and accordingly quantified the subsidy receivable in the form of IPS of Rs.4,023.36Crores.

13. On perusal of records we note that during the A.Y.2013-14, the assessee has accrued an Investment Promotion Subsidy ('IPS') of Rs.32,75,60,000/- based on the sales made and credited to P&L account under 'Other Operating Revenue'. The aforesaid incentive was treated as a revenue receipt in its statutory books and income tax return.During scrutiny assessment proceedings, the Assessee submitted an additional

claim that the incentive in the form of Investment Promotion Subsidy (IPS) was received for the purpose of setting up / expansion of Phase II manufacturing facility and as such IPS should be treated as a capital receipt not chargeable to tax. In the draft assessment order, the Assessing Officer ('AO') did not entertain the claim of the Assessee.

14. We note that the Tribunal in assessee's own case for A.Y.2012-13 in IT(TP)A No.51/Chny/2021 dated 27/09/2023(supra) decided the issue in favour of assessee holding that the IPS received from Govt. of Tamilnadu by way of Output Tax as capital receipt not chargeable to tax. The same has been given effect by passing OGE by the AO for the A.Y. 2012-13 dated 20/02/2024. The extract of the AO's decision is as under:

> *"6. Tax treatment of output VAT Incentives (Investment Promotion Subsidy)*
>
> *"Considering the submissions made and the details verified, the claim of the Assessee that the Subsidy accrued during the year (IPS) (Rs.33,00,82,506/-) is a capital receipt, not chargeable to tax, is hereby accepted."*

15. In the facts and circumstances of the case and following the decision of the Tribunal (supra), we are of the considered

view that the IPS received by way of Output tax for the A Y 2013-14 is capital receipt not chargeable to tax.

16. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 21st August, 2024 at Chennai.

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| Sd/- | Sd/- |
| **(एबीटीवर्की)** | **(**एस**.**आर**.**रघुनाथा**)** |
| **(ABY T VARKEY)** | **(S. R. RAGHUNATHA)** |
| न्यायिकसदस्य**/Judicial Member** | लेखासदस्य**/Accountant Member** |

चेन्नई/Chennai,
दिनांक/Dated, the 21st August, 2024
***JPV***
आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF