आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Amitabh Shukla, Accountant Member

आयकर अपील सं./**I.T.A. No.1823/Chny/2024**
निर्धारण वर्ष/Assessment Year: 2018-19

Geena Garments S.F. No. 410, R.K. Nagar, Pichampalayampudur B.O., Tiruppur 641 603. **[PAN: AAGFG6962K]**	Vs.	The Assistant Commissioner of Income Tax, Circle 1, Tirupur.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Suraj Nahar, C.A.
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Gouthami Manivasagam, JCIT
सुनवाई की तारीख/ Date of hearing	:	09.10.2024
घोषणा की तारीख /Date of Pronouncement	:	16.10.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 29.04.2024 passed by the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi for the assessment year 2018-19.

2. The assessee raised 7 grounds of appeal amongst which, the only issue emanates for our consideration as to whether the ld. CIT(A) is justified in confirming the addition made by the Assessing Officer treating

the receipts on transfer of MEIS license as revenue receipt on the facts and circumstances of the case.

3. We note that the assessee is a partnership firm, engaged in the business of manufacturing and export of hosiery garments and filed its return of income declaring total income of ₹.1,84,14,130/- by claiming exemption of ₹.1,30,75,203/- towards receipts on transfer of MEIS license. The Assessing Officer completed the assessment proceedings, inter alia, making addition of ₹.1,30,75,203/- treating receipts on transfer of MEIS license as income as against capital receipt vide his order dated 27.03.2021 under section 143(3) r.w.s. 143(3A) & 143(3)(3B) of the Income Tax Act, 1961 ["Act" in short]. The Id. CIT(A) confirmed the same.

4. Before us, the Id. AR Shri Suraj Nahar, C.A. submits that the receipt on transfer of MEIS license is a capital receipt and is not chargeable to tax under the head profits and gains of business or profession. He argued that the receipt on transfer of MEIS license is not an incentive as per the provisions of section 2(24)(xviii) of the Act. The Id. AR relied on the decision of the Coordinate Bench in assessee's own case for the assessment year 2017-18 and prayed that the same may be followed.

5. The Id. DR Ms. Gouthami Manivasagam, JCIT supported the orders of authorities below.

6. Having heard both the parties and perused the material available on record. In the assessment order, the Assessing Officer held the receipts from sale of MEIS and FPS license is a revenue receipt and taxable under profits and gains from business, which was confirmed by the ld. CIT(A). On perusal of the order of the Tribunal in assessee's own case for the assessment year 2017-18 in ITA No. 1348/Chny/2023 vide order dated 20.09.2024, while adjudicating an identical issue in the main appeal of the Revenue in the case of ACIT v. Eastman Exports Global Clothing (P) Ltd., we find that the Tribunal passed detailed order holding that the receipts from sale of MEIS/FPS license is a capital receipt and not taxable under profits and gains from business. The relevant part of the order is reproduced herein below for ready reference:

> *17. Heard both the parties and perused the materials available on record. The ld. CIT-DR, Shri S. Palanikumar vehemently contended that the Hon'ble High Court of Bombay in the case of Serum Institute of India (P.) Ltd. v. Union of India (supra) clearly held the subsidy and concession are fall under the definition of income as provided in the amendment to section 2(24) by insertion of sub-clause (xviii) by Finance Act, 2015. Therefore, we have to consider as to whether in the present case, the sale of MFLPS scrips granted by the Government of India under Foreign Trade Policy-2015 is revenue receipt or otherwise. In this regard, the ld. DR drew our attention to para 10 and 43 of the decision of the Hon'ble High Court of Bombay (supra), for better understanding, para 10 and para 41, 42 & 43 are reproduced below:*
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> > *10 Petitioner is challenging the constitutional validity of the impugned sub-clause (xviii) of Section 2(24) of the Act whereby all incentives given in whichever form by the Government and with whatever purpose of objective are to be treated as income, irrespective of the fact as to whether or not the same is in the nature of capital assistance and or revenue assistance.*
> >
> > *XXXXXXXXXX*
> > *XXXXXXXXXX*
> > *XXXXXXXXXX*

41 Matters of economic policy should be best left to the wisdom of the legislature. In the context of a changed economic scenario the expertise of the people dealing with the subject should not be lightly interfered with. While dealing with economic legislation, this court would interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all. The case of petitioner certainly does not fall within this exception. We also do not find that by inserting the impugned sub clause there is any perversity or gross disparity resulting in clear or hostile discrimination.

42 As noted earlier it is trite that the legislature is the best forum to weigh different problems in the fiscal domain and form policies to address the same including to create a new liability, exempt an existing liability, create a deduction or subject an existing deduction to new regulatory measures. In the very nature of taxing statutes, legislature holds the power to frame laws to plug in specific leakages.

The mere fact that the institution of tax by virtue of the impugned sub clause falls more heavily on petitioner cannot result in its invalidity.

43. In light of the above, in our view, the amendment to section 2(24) by the insertion of sub-cause (xviii) of the Finance Act, 2015, is a perfect example of a legislative endeavour to align the definition of "income" with the evolving economic landscapes and judicial precedent of it being an inclusive and elastic term. The submissions of petitioner though appear to be of fiscal concern were, in our view, more an argument of diminished profits and a narrow interpretation of income which the Apex Court has time and again expanded. The submissions of petitioner fall short of appreciating the overarching legislative intent to foster a comprehensive and equitable taxation regime. The amendment to Section 2(24) by insertion of the impugned sub-clause that includes various subsidies and concessions only indicates the well established jurisprudential path ensuring that the income tax laws remain attuned to the economic realities and continue to serve as a vital cog in the nation's fiscal machinery. As submitted by ASG, it is the duty of the legislature to ensure that taxation policy reflects a balance between incentivizing economic activity and ensuring the equitable distribution of fiscal resources. 44 In our view, there is no merit in the petition. Petition dismissed.

18. On careful reading of para 10 above, we note that the assessee/ petitioner therein challenged the constitutional validity of impugned sub-clause (xviii) to section 2(24) of the Act, whereby, contending all incentives given in whichever form by the Government and with whatever purpose of objective are to be treated as income, irrespective of the fact as to whether or not the same is in the nature of capital assistance and or revenue assistance, which clearly establishes that the assessee/petitioner therein challenged constitutional validity of the insertion of sub-clause (xviii) to section 2(24) of the Act. Further, on careful reading of paras 41 and 43, the Hon'ble High Court was pleased to observe that there is no perversity or gross disparity resulting in clear or hostile discrimination by inserting impugned sub-clause and held the amendment to section 2(24) by insertion of the sub-clause (xviii) through Finance Act, 2015, is a perfect example of a legislative endeavour to

align the definition of "income" with the evolving economic landscapes and judicial precedent of it being an inclusive and elastic term. Further, observed, amendment to section 2(24) by insertion of the impugned sub-clause that includes various subsidies and concessions only indicates the well established jurisprudential path ensuring that the income tax laws remain attuned to the economic realities and continue to serve as a vital cog in the nation's fiscal machinery. Therefore, in our opinion, there was no adjudication nor law laid down by the Hon'ble High Court of Bombay with regard to the applicability of words or items as contemplated in sub-clause (xviii) to section 2(24) of the Act, thus, we do not find force in the arguments of the ld. DR that the Hon'ble High Court of Bombay was pleased to hold all incentives given in general form by the Government for whatever purpose or objective are to be treated, as income.

19. We find the orders of this Tribunal in assessee's own case for AYs 2011-12, 2012-13, 2013-14, 2016-17, 2014-15 and 2015-16 are at pages 112 to 147 of the assessee's paper book. The consolidated order for AY 2011-12 & 2012-13 at page 112 of the paper book, on perusal of the relevant part at page 118 in para 9, we note that a question arose for consideration before the Tribunal that when the assessee was given incentive for exploring the new markets across the globe, whether such incentive would be a capital receipt or revenue receipt? The Tribunal followed the decision of the Hon'ble Supreme Court in the case of CIT v. Ponni Sugars & Chemicals Ltd. 306 ITR 392, held the incentives provided by the Government of India for exploring the new markets across the globe and given to the assessee is not for running the business profitably but for expanding the market area, is a capital receipt, cannot be treated as income either under section 2(24) or section 28 of the Act. Further, the same finding was followed in AYs 2014-15 and 2015-16 vide order dated 10.02.2023 in assessee's own case, which is at page 131 of the paper book. Thus, it is clear the Coordinate Benches held the incentive given by Government for exploring new market area, is a capital receipt, cannot be charged to tax either under section 2(24) or 28 of the Act.

20. Further, the ld. DR placed reliance in the case of Hyundai Motor India Ltd. V. ACIT (supra) and drew our attention to para 34 of the said order and argued that the ITAT Chennai Bench observed that the facts are not appraised in right perspective of law in the case of Eastman Exports Global Clothing Pvt. Ltd. (assessee before us), and held that the said judgement of the Chennai Bench is not considered. Further, it was also held that the facts in the case of PCIT v. Nitin Spinners Ltd. (supra) are different from the facts in the case of Hyundai Motor India Ltd. V. ACIT (supra) and thereby, not considered.

21. We find that the Coordinate Bench in the case of Hyundai Motor India Ltd. V. ACIT (supra) held the duty credit scrips received from Government of India under Focus Market Scheme ["FMS" in short hereafter] is revenue in nature. Further, we note that the Coordinate Bench held the facts in the case of Hyundai Motor India Ltd. (supra) and in the case of Nitin Spinners Ltd. (supra) are different. We find, on careful reading of para 8 of the judgement of Hon'ble High Court of Rajasthan in the case of Nitin Spinners Ltd. (supra) at pare 110 of the paper book, clearly shows the question before the Hon'ble High Court was with regard to the subsidy given by the Central Government under Focus Marketing Scheme (FMS) to enhance Indian export potential in the international market. The Hon'ble High Court observed that the said subsidy was not granted to meet the cost of expenditure to meet the

competition of the Indian textile market and was pleased to upheld the order of the ITAT in holding the said amount was not an incentive, but is capital receipt and therefore, not taxable by placing reliance in the case of Ponni Sugars & Chemicals Ltd. (supra).

22. On examination of the facts in the case of Hyundai Motors India Ltd. V. ACIT (supra), it is clear from para 34, the issue therein was with regard to "FMS" as it is mentioned in para 8 of the decision of the Hon'ble High Court of Rajasthan in the case of PCIT v. Nitin Spinners Ltd. (supra). Therefore, we find force in the arguments of the ld. AR that the facts in the case of Hyundai Motors India Ltd. V. ACIT (supra) and in the case of PCIT v. Nitin Spinners Ltd. (supra) are relating to "FMS" only. Further, we note that as aggrieved by the decision of the Hon'ble High Court of Rajasthan in the case of PCIT v. Nitin Spinners Ltd., the Revenue preferred SLP in Civil Diary No. S-179 of 2020 before the Hon'ble Supreme Court, which in turn dismissed the said SLP vide its order dated 31,.08.2021, thereby, it clearly manifest the subsidy granted by Government of India to enhance Indian export potential in the international market, is a capital receipt, not chargeable to tax.

23. Further, we may not accept the arguments of the ld. DR that the order of this Tribunal in the case of Hyundai Motor India Ltd. V. ACIT (supra) is binding on us to hold as a revenue receipt in view of the order of another Coordinate Bench in assessee's own case for AY 2014-15 and 2015-16, which held as a capital receipt, which is admittedly latest to the order of the Hyundai Motor India Ltd. V. ACIT (supra). We find the order passed by Hyundai Motor India Ltd. V. ACIT (supra) was on 01.09.2021 and in assessee's own case for AY 2014-15 and 2015-16 was on 10.02.2023, the Coordinate Bench followed the orders for AY 2011-12 & 2012-13, 2013-14 & 2016-17, held sale of scrips under MLFPS is capital receipt, not chargeable to tax.

24. Further, a contention was raised by the ld. AR that a reference to the applicability of sub-clause (xviii) to section 2(24) of the Act, wherein, he argued that there was no corresponding amendment to section 28 of the Act. We note that the Assessing Officer discussed the provision under section 28 of the Act in his order at page 3 of the assessment order and held sub-clause (iiia), (iiib), (iiic), (iiid) and (iiie) covers the income, nothing, but incentive to promote export trade – similar to the scheme of MLFPS. We note that under Chapter IV of the Income Tax Act "Computation of Income" is provided under main heads i.e., salary, income from house property and profits and gains of profession. If we refer to sub-clause (iiia) of section 28 of the Act, which explains profits on sale of a license granted under the Import (Control) order, in our opinion, is not applicable in the facts and circumstances of the case. Further, sub-clause (iiib) of section 28 of the Act provides cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India. We find force in the argument of the ld. AR that there was no cash assistance granted to the assessee in the present case, thus, it is not applicable. Further, sub-clause (iiic), explains any duty of customs or excise re-paid or repayable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, is in our opinion, not applicable. Further, sub-clause (iiid) and (iiie) explains any profit on the transfer of the Duty Entitlement Pass Book scheme and any profit on the transfer of the Duty Free Replenishment Certificate respectively, admittedly, do not cover the facts and circumstances of the case, so, not applicable.

25. We note that the assessee contended before the Assessing Officer that there is no applicability of section 28 and 56 of the Act, but, however, the Assessing Officer held the case of the assessee falls under sub-clauses (iiia), (iiib), (iiic), (iiid) & (iiie) to section 28 of the Act r.w.s. 2(24) and section 56 of the Act. On examination of the said provisions, we find the reasoning of the Assessing Officer in treating the sale of MLFPS as business income. In this regard, we shall examine as to whether the sale of scrips of MLFPS would fall under the provisions of section 2(24)(xviii) of the Act. We note that export from India, schemes are brought under Chapter 3 of Foreign Trade Policy between 01.04.2015 to 31.03.2020, which are placed on record at page 2 of the paper book by the ld. AR and reproduced relevant position herein below:

Chapter 3
EXPORTS FROM INDIA SCHEMES
3.00 Objective
The objective of schemes under this chapter is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved and to provide exporters a level playing field.

3.01 Exports from India Schemes

There shall be following two schemes for exports of Merchandise and Services respectively:

(i) Merchandise Exports from India Scheme (MEIS)
(ii) Service Export from India Scheme (SEIS)

3.02 Nature of Rewards

Duty Credit Scrips shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported/domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for:

(i) Payment of Customs Duties for import of inputs or goods, except items listed in Appendix 3A.

(ii) Payment of excise duties on domestic procurement of inputs or goods, including capital goods as per DoR notification.

(iii) Payment of service tax on procurement of services as per DoR notification.

(iv) Payment of Customs Duty and fee as per paragraphci 3.18 of this Policy.

Merchandise Exports from India Scheme (MEIS)

3.03 Objective

Objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

3.04 Entitlement under MEIS

Exports of notified goods/products with ITC(HS) code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of reward on various notified products [ITC(HS) code wise]. The basis of calculation of reward would be on realised FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in free foreign exchange, whichever is less, unless otherwise specified.

3.05 Export of goods through courier or foreign post offices using e-Commerce

(i) Exports of goods through courier or foreign post office using e-commerce, as notified in Appendix 3C, of FOB value upto Rs.25000 per consignment shall be entitled for rewards under MEIS.

(ii) If the value of exports using e-commerce platform is more than Rs.25000 per consignment then MEIS reward would be limited to FOB value of Rs.25000 only.

26. The ld. AR argued that MEIS granted under Foreign Trade Policy is a reward as explained in the objective above to provide exporters a level playing field to offset infrastructural inefficiencies and associated costs involved therein. We find, admittedly, the assessee is an exporter falling under 3.01 (i) Merchandise Exports from India Scheme (MEIS) concerning the reward as explained in Chapter 3 regarding objective of schemes provided to exporters.

27. Now, let us examine the Chapter 3 – with reference to 3.00 & 3.01(i) r.w. provisions under section 2(24)(xviii) of the Act. We already held that the objective of the scheme is to provide rewards to exporters falling under MEIS of Foreign Trade Policy – 2015 framed by the Government of India to exporters for level playing field. In view of the same, let us examine the arguments of the ld. DR as to whether the provisions under section 2(24)(xviii) of the Act are attracted to the facts of the present case or not, for better understanding, the provisions under section 2(24)(xviii) of the Act inserted by the Finance Act, 2015, w.e.f. 01.04.2016 is reproduced herein below for ready reference:

(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 as substituted by the Finance Act, 2016, w.e.f. 01.04.2017

(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.]

28. On plain reading of the above provisions, we note that the definition of income is provided under many sub-clauses to sub-section (24) of section 2 of the act,. The definition of income under sub-clause (xviii) includes assistance in the form of "subsidy" or "grant" or "cash incentives" or "duty drawback" or "waiver" or "concession" or "reimbursement" (by whatever name called) from Central Government or state Government or any authority or body or agency in cash or kind. In the present case, we find no "subsidy" or "grant" or "cash incentives" or "duty drawback" or "waiver" or "concession" or "reimbursement". The assessee got only reward for MEIS scheme under Foreign Trade Policy-2015 for a level playing field.

29. In this regard, the ld. AR placed on record meaning of terms in reference to section 2(24)(xviii) of the Act with examples. On perusal of the said meaning of terms, we note that the Government has launched the Fertilizer Subsidy Scheme, whereby, subsidy is paid on fertilizer sold for direct agriculture uses. The fertilizer subsidy division deals with payment of cost of imported urea of OMIFCO/canalizing agencies, recovery of pool issue price of urea from Handling Agencies, Ocean freight payments to vessel owners, subsidy disbursement in respect of imported urea, indigenous & imported P & K fertilizers, SSP including freight subsidy, reimbursement of freight, insurance charges, custom duty, handing charges, etc. With regard to the term "grant" in reference to section 2(24)(xviii) of the Act means, it is a sum of money given to a business or individual by the Government to support them in implementing or establishing the ideas or projects that ultimately contribute to societal development. The grantee is expected to use the funds from the grant for the stated purposes. "Cash incentive" means any incentive received in cash and as its name indicates, a cash incentive has a clear monetary value being granted to motivate employees/company(s) to achieve the target/ company's overall revenue, etc. The term "reimbursement" means any expenditure which has been incurred by the assessee is being given back to the assessee. Since the expenditure would have been met in cash, the reimbursement of the same would also be in cash. As per Central Board of Indirect Taxes and Customs, "duty drawback" is a trusted and time-tested scheme administered by CBIC to promote exports. It rebates the incidence of Customs and Central Excise duties, chargeable on imported and excisable material respectively when used as inputs for goods to be exported. This WTO compliant scheme ensures that exports are zero-rated and do not carry the burden of the specific taxes. So duty drawback can either be in cash or in kind granted by the Board. "Waiver" or "Concession" falls under the category of discount on any amounts payable or paid. Therefore, we find the word and expressions by way of subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement made in sub-clause (xviii) of section 2(24) of the Act does not attract the facts of the present case.

30. We have to see as to whether the words by "whatever name called" will attract the "assistance" or the words subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement with reference to definition given above. In this regard, Shri Banusekar, ld. AR filed written note on principle of ejusdem generis and explained that where general words follow specific words then such general words take the colour from the specific words that precede and drew our attention the decisions of the Hon'ble Supreme Court in the case of Lokmat Newspaper Pvt. Ltd. v. Shankar Prasad AIR 1999 SC 2423, Municipal Corporation of Greater Bombay v. Bharat Petroleum Corporation Ltd. [2002] 4 SCC 219 and Grasim Industries Ltd. v. Collector of Customs [2002] 4 SCC 297. The relevant part of 3 above said judgements are reproduced herein below:

> *In Lokmat Newspaper Pvt. Ltd. v. Shankar Prasad AIR 1999 SC 2423 the Hon'ble Supreme Court has stated that the rule of ejusdem generis provides that "When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified".*
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> *Further, the Hon'ble Supreme Court in the case of Municipal Corporation of Greater Bombay v. Bharat Petroleum Corporation Ltd. [2002] 4 SCC 219, has observed as under:*
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> *"............ The principle underlying ejusdem generis is applied when the statutory provisions concerned contain an enumeration of specific words, the subject of enumeration thereby constituting a class or category but which class or category is not exhausted at the same time by the enumeration and the general term follows the enumeration with no specific indication of any different legislative intention.*
>
> *The Hon'ble Supreme Court in the case of Grasim Industries Ltd. v. Collector of Customs [2002] 4 SCC 297, has held as under:*
>
> *"In the background of what has been urged by the assessee it has to be further seen whether the principles of ejusdem generis have application. The rule is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are construed as limited to things of the same kind as those specified.........."*

31. On careful reading of the above judgements along with written note of the ld. AR, we note that the meaning of an unclear or ambiguous word or phrase can be determined by the words surrounding it and the words surrounding the words "by whatever name called" are the words subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement. Therefore, in our opinion, that the words "by whatever name called" only qualifies the words "subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement" and not the word "assistance". As canvassed by the ld. AR, we note that the principle of ejusdem generis focuses on interpreting a general term in a list based on specific accompanying terms, taking support from the decision of Hon'ble Supreme Court in the case of Lokmat Newspaper Pvt. Ltd. v. Shankar Prasad (supra), Municipal Corporation of Greater Bombay v. Bharat Petroleum Corporation Ltd. (supra) and Grasim Industries Ltd. v. Collector of Customs (supra), in our opinion, the words

"by whatever name called" do not expand the scope of the word "assistance", but, only expands the scope of the words "subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement". We thus, hold that the word "assistance" is independent of the words "by whatever name called" and words "by whatever name called" are not qualifying the word "assistance". By applying the same finding, let us see the difference between the words "reward" and "assistance". As per the note given by the ld. AR, the term "reward" is defined as a "thing given in recognition of service, efforts or achievement", whereas, the term "assistance" is defined as the provision of money, resources or information to help someone, thus, we find a "reward" is granted in a recognition of services, an assistance is given to someone as a help, but not in recognition of a service rendered. Therefore, in our opinion, there is a clear difference between the words "reward" and "assistance", thus, we hold the "reward" as in the Foreign Trade Policy – 2015 and the "assistance" as found in the provisions under section 2(24)(xviii) of the Act are different from each other, the "reward" does not fall within the definition of sub-clause (xviii) of sub-section (24) of section 2 of the Act.

32. Further, we find benefit granted under the Foreign Trade Policy – 2015 by way of MEIS scrips do not fall within the meaning of any of the terms cited from Government website and, therefore, does not fall within the meaning of "subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement" as provided under section 2(24)(xviii) of the Act.

33. The ld. DR preferred Income Computation and Disclosure Standard ["ICDS" in short hereinafter] and submits that the CBDT notified ICDS -1 to ICDS-X vide notification No. SO-892(E) dated 31.03.2015 after wide public consultation. The ICDS-VII relating to Government grants provides that all Government grants except relating to depreciable asset shall be recognized as income in accordance with the provisions of the said ICDS. We note that in order to avoid future litigation and controversy that definition of income under section 2(24) has been amended so as to provide that income shall include 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. He argued that this ICDS is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "income from other sources". In case of any conflict between the provisions of the Income Tax Act and the ICDS, the provisions of the Act shall prevail to the extent. We find this ICDS deals with the treatment of Government grants. The Government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc. We find the treatment of Government grants at page 12 & 13 of the paper book, which is reproduced herein below for better understanding:

Treatment of Government Grants

5. Where the Government grant relates to a depreciable fixed assets or assets of a person, the grant shall be deducted from the actual cost of the asset or assets concerned or from the written down value of block of assets to which concerned asset or assets belonged to.

6. Where the Government grant relates to a non-depreciable asset or assets of a person requiring fulfilment of certain obligations, the

grant shall be recognised as income over the same period over which the cost of meeting such obligations is charged to income.

7. Where the Government grant is of such a nature that it cannot be directly relatable to the asset acquired, so much of the amount which hears to the total Government grant, the same proportion as such asset bears to all the assets in respect of or with reference to which the Government grant is so deducted from the actual cost of the asset or shall be reduced from the written down value of block of assets to which the asset or assets belonged to.

8. The Government grant that is receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support to the person with no further related costs, shall be recognised as income of the period in which it is receivable.

9. The Government grants other than covered by paragraph 5, 6, 7 and 8 shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate.

10. The Government grants in the form of non-monetary assets, given at a concessional rate, shall be accounted for on the basis of their acquisition cost.

34. On perusal of the above, we note that the ICDS-VII only refers to a Government grant as seen above. We find the duty credit scrips under MEIS not included within its ambit, therefore, since MEIS is a reward not governed by ICDS-VII. The point 9 above clearly states that the Government grant other than covered by paragraph 5, 6, 7 & 8 shall be recognized as income over the periods necessary to match them with related costs which they are intended to compensate. We find a grant is a sum of money given by the Government or to be paid for a particular purpose, since, we held that benefit by way of MEIS scrips is not an assistance by way of a grant, in our opinion, the MEIS does not fall under ICDS-VII, since MEIS is not a grant. In this regard in support of our view, let us reproduce point No. 3.03 of Foreign Trade Policy – 2015 at page 3 of the paper book:

3.03 Objective

Objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

35. The above point 3.03 clearly shows the objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

36. In reply, the ld. CIT-DR Shri Palanikumar contended the benefit of MEIS under Foreign Trade Policy-2015 are received on a year to year basis, is a revenue receipt, but not a capital receipt. We note that merely because a receipt is received on a year to year basis, is a revenue receipt is not acceptable for the reason that this Tribunal for AYs 2011-12 to 2016-17 i.e., five assessment years held the receipt of sale of scrips under MLFPS based on Foreign Trade Policy-2015 is a capital receipt, we find no contrary view brought on record by the appellant-revenue, therefore, we find force in the arguments of the ld. AR that the reward under the Foreign Trade Policy-2015 by way of MEIS scrips is given as a percentage of turnover cannot make the same as a revenue receipt, moreover, the manner of determining the benefit by itself cannot change the character of a capital receipt into a revenue receipt when the said benefit is not falling within the meaning under the provisions of section 2(24)(xviii) of the Act. In this regard, we refer to the decision of Hon'ble Supreme Court in the case of CIT v. Ponni Sugars & Chemicals Ltd. & ors. (supra), which held that the purpose test is determination of whether a benefit under a Government policy is income or otherwise, the relevant portion of which is reproduced herein below for better understanding:

> *5. That matter concerns the 1980 Scheme. The dispute pertains to Assessment Year 1986-87. In this matter both the above questions arises for determination. The incentives conferred under that Scheme were twofold. First, in the nature of a higher free sale sugar quota and second, in allowing the manufacturer to collect excise duty on the sale price of the free sale sugar in excess of the normal quota, but pay to the Government only the excise duty payable on the price of levy sugar. In that connection, we quote clause 7 of the Scheme, which reads as under:*
>
> > *"The beneficiaries of the incentive scheme shall ensure that the surplus funds generated through sale of the incentive sugar are utilized for the repayment of term loans, if any, outstanding from the Central Financial institutions. The sugar factories should submit utilization certificates annually from Chartered/Cost Accountant, holding certificate of practice. Utilisation certificate in respect of each sugar season during the incentive period should be furnished on or before the 31st December of the succeeding year. Failure to submit utilization certificate within the stipulated time may result not only in the termination of release of incentive free sale quota, but also in the recovery of the incentive free sale releases already made, by resorting to adjustment from the free sale releases of future years."*
>
> *6. At this stage, we may again note that the 1980 and 1987 Schemes are similar to each other. In the case of Salem Cooperative Sugar Mills Ltd. we are concerned with the Scheme of 1980.*
>
> *7. On the first question, namely, whether the incentive subsidy received by the assessee is a capital receipt, Shri P.V. Shetty, learned senior counsel appearing on behalf of the Department (appellant) submitted that the additional revenue generated by higher free sale sugar quota cannot be considered to be a capital receipt in the hands of the assessee (respondent herein) as held by the High Court. He further contended that similarly*

retention of the collective excise duty on the sale price of free sale sugar in excess of the normal quota and paying to the Government only the excise duty payable on the price of levy sugar resulted in revenue generation in the hands of the assessee which contention of the Department has been erroneously rejected by the High Court. According to the learned counsel, under the Scheme, there were two distinct concepts, namely, the concept of accrual of income in the hands of the assessee and the concept of application of additional funds generated thereunder. According to the learned counsel, application of additional funds is neither material nor relevant for deciding the character of the incentive subsidy. In this connection, learned counsel placed reliance on the judgment of this Court in the case of Sahney Steel and Press Works Ltd. and Ors. v. CIT reported in (1997) 228 ITR 253.

8. Shri Ganesh, learned senior counsel appearing on behalf of the assessee submitted that the benefits were conferred on the assessee under the 1980 and 1987 Schemes, namely, additional price by reason of enhancement of free sale sugar quota, which resulted in the benefit of additional price, which price had to be utilized only for repayment of loans taken by the assessee to establish a new unit or for expanding the existing unit. The said Schemes were not meant for a running unit. The second benefit, according to the learned counsel, lay in the rebate of excise duty under which the assessee was required to pay excise duty on the manufacture of additional quota of free sale sugar. According to the learned counsel, in judging the character of the incentive, the "purpose test" is applicable. In other words, according to the learned counsel, the character of the receipt in the hands of the assessee had to be determined with respect to the purpose for which the subsidy was given and that the point of time at which it is paid or its source or its form was irrelevant. In this connection, learned counsel also places reliance on the same judgment of this Court in the case of Sahney Steel and Press Works Ltd. (supra).

9. The key question which arises for determination is: what is the character of the incentive subsidy under the said Schemes?

10. At the outset, it may be stated that during the relevant year in question, on account of economic factors, namely, high cost, the new sugar factories could not come up as it was not economically viable. Due to high cost, the financial institutions did not come forward to advance loans to the entrepreneurs of new sugar factories. Secondly, the tempo of establishing new sugar factories received a serious set back, therefore, the Government appointed a Committee known as Sampat Committee to examine the question relating to economic viability of new sugar factories. One of the terms of reference suggested was to work out various incentives for making new sugar factories economically viable units. The increase of the cost of the project during the relevant years was on account of the increase in the cost of Plant and Machinery. The said Committee gave its Report in which the Committee recommended that the economic viability of a factory would mean that the unit should not break even after meeting the working expenses, interest on borrowings, depreciation on Plant and Machinery, but it should also be able to declare a reasonable dividend on the equity capital.

According to the Committee, the factory should be able to generate sufficient funds to repay the instalments of the term loans. Under Para 21.0 the said Committee stated that five possible incentives for making a sugar plant economically viable unit could be provided for, namely, capital subsidy, allowing a larger percentage of free sale sugar, high levy sugar price, allowing rebate on excise duty and remission of purchase tax. In this case, we are concerned with allowability of a larger percentage of free sale sugar and rebate on excise duty. Following the said Report of the Sampat Committee, the above Schemes came to be formulated.

11. We have examined in this case the 1980 and 1987 Schemes. Essentially all the four schemes are similar except in the matter of details. Four factors exist in the said Schemes, which are as follows:

(i) Benefit of the incentive subsidy was available only to new units and to substantially expanded units, not to supplement the trade receipts.

(ii) The minimum investment specified was Rs. 4 crores for new units and Rs. 2 crores for expansion units.

(iii) Increase in the free sale sugar quota depended upon increase in the production capacity. In other words, the extent of the increase of free sale sugar quota depended upon the increase in the production capacity.

(iv) The benefit of the scheme had to be utilized only for repayment of term loans.

12. One important aspect may also be noted that in the case of Salem Cooperative Sugar Mills Ltd. we are concerned with Notification dated 15.11.1980. It indicates the above factors of the Scheme. The important point to be noted is that Government of India, financial institutions as well as the sugar industries are parties to the scheme in the sense that but for the scheme the financial institutions would not have given term loans to set up new units/expansion of the existing units.

13. The main controversy arises in these cases because of the reason that the incentives were given through the mechanism of price differential and the duty differential. According to the Department, price and costs are essential items that are basic to the profit making process and that any price related mechanism would normally be presumed to be revenue in nature. In other words, according to the Department, since incentives were given through price and duty differentials, the character of the impugned incentive in this case was revenue and not capital in nature. On the other hand, according to the assessee, what was relevant to decide the character of the incentive is the purpose test and not the mechanism of payment.

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."

37. On careful reading of the above, we note that the Hon'ble Supreme Court by referring to facts of the Sahney Steels & Press Works (supra) observed 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 and 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. Taking into account the same, held if the object of the

assistance under the subsidy scheme was to enable the assessee to set up new unit or to expand the existing unit, then the receipt of the subsidy was on capital account.

38. By applying the same ratio as held by the Hon'ble Supreme Court in the case of CIT v. Ponni Sugars & Chemicals Ltd. & ors. (supra) to the facts of the present case, we note that the reward by way of MEIS scrips is given to offset infrastructure inefficiencies, but, not for the purpose of running the business more profitably. It is noted further that though the said amounts are brought into profit and loss account claimed as exempt in the return of income, we find the said treatment in the books of accounts by itself cannot be determinative of taxability, we, therefore, hold that the same treatment of amounts received by way of sale of MEIS scrips as credited to the profit and loss account cannot alter the receipt, in our opinion, does not fall in the definition of income even after insertion of sub-clause (xviii) to section 2(24) of the Act. Thus, it is a capital receipt, not chargeable to tax. Therefore, the contention of the ld. DR relying upon the decision in the case of Sahney Steels & Works Ltd (supr) is not acceptable.

39. In the case of ACIT v. Gravita Metal Inc in ITA No. 594/Asr/2019 for AY 2016-17 dated 15.06.2023, the Amritsar Bench of ITAT held as under:

> *16. The Ld. AR argued that 'exemption' and 'subsidy' are two separate and independent words and which are not defined. He contended that therefore, the general meaning of these words are required to be considered, as per Black's Law Dictionary (Sixth Edition) wherein these two words are defined as under:-*
>
> > *'Exemption: Freedom from a general duty or service; immunity from a general burden, tax, or charge. Immunity from service of process or from certain legal obligations, as jury duty, military service, or the payment of taxes.'*
> >
> > *'Subsidy: A grant of money made by government in aid of the promoters of any enterprise, work, or improvement in which the government desires to participate, or which is considered a proper subject for government aid, because such purpose is likely to be of benefit to the public'*
>
> *17. From the above definitions, it is apparently clear that word exemption is used in the conditions when assessee is given freedom from following any rules or regulations whereas subsidy is something which is given to the assessee to meet the cost of its project. In the present case, assessee is exempted from making payment of excise duty to the extent of 36% of the total excise duty collected. It is not subsidy given to meet cost of project. In our view, the exemption from excise duty do not fall in the definition of income as envisaged u/s 2(24)(xviii) of the Act. Meaning thereby, the amount of Rs.1,85,49,324/- is not an income but a capital receipt not taxable under the provisions of the Act.*
>
> *18. The Hon'ble Supreme Court in "Commissioner of Custom Vs. Dilip Kumar & Co.", (Supra) by considering the decision of judgment of State of West Bengal Vs. Kesoram Industries Ltd. 10 SCC 201 decided by the bench*

of 5 judges, has laid down the principles applicable for interpretation of taxing statute that in interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and that If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly'. This principal of law is quoted referred by Hon'ble Supreme Court in case of "Checkmate Services Pvt. Ltd. Vs. CIT", (2022) 448 ITR 518 vide Para 50 of its judgement.

19. Respectfully, applying the above settled principal of law, to the interpretation of the Notification No.56/2002 dtd. 14.11.2002 as amended by Notification No.19/2008 dt. 27.03.2008, the assessee is granted exemption from payment of excise duty to the balance part of 36% of total excise duty collected. Since, the word 'exemption' in not included in the of ambit the Section 2(24)(xviii) of the Act, though it specifically includes the words subsidy, grant, cash incentive, duty drawback, waiver, concession & reimbursement. and hence, in the absence of inclusion of word 'exemption' under the said clause, we are of the considered view that the scope of this section cannot be enlarged to include exemption by interpreting that it is subsidy. Accordingly, the addition of Rs.1,85,49,324/-, confirmed by Ld. CIT(A) is held to be unjustified and bad in law. As such, the part addition confirmed by Ld. CIT(A) is directed to be deleted. Thus, the ground of the assessee is allowed.

40. On perusal of the above, we note that the Amritsar Bench of ITAT, by taking into account definition as per Black's Law Dictionary, held the words "exemption" and "subsidy" are two separate independent words in. Further, it held the word "exemption" from excise duty do not fall in the definition of income as envisaged under section 2(24)(xviii) of the Act, thereby, held a sum claimed as exempt is not an income, but a capital receipt not taxable under the provisions of the Act. In order to come to such conclusion, the Amritsar Bench of ITAT placed reliance in the case of Commissioner of Customs v. Dilip Kumar & Co. AIR [2018] Supreme Court 3606, which laid down principle applicable for interpretation of taxing statute, that in interpreting taxing statute equitable consideration are entirely out of place, a taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted what is clearly expressed, it cannot employ anything which is not expressed, it cannot import provision to statute so as to supply any deficiency, that before taxing any person, it must be shown that he falls within the ambit of section 2(24)(xviii) of the Act and in the absence of inclusion of words under the said clause, the scope of section cannot be enlarged to include exemption by interpreting with its subsidy. We find the facts of the present case are identical to the facts before ITAT Amritsar Benches. In the present case, the word "reward" is absent in the provisions of section 2(24)(xviii) of the Act, in the absence of said word in section 2(24)(xviii) of the Act, the scope of the section cannot be enlarged to include "reward".

41. This Tribunal, in assessee's own case for AY 2011-12 & 2012-13 as per page 112-119 of the paper book, discussed the said issue in detail and the relevant part at para 9 is reproduced herein below for ready reference:

> *"9. We have considered the rival submissions on either side and also perused the relevant material available on record. The Market Linked Product Scheme is a scheme promoted by the Director General of Foreign Trade wherein incentive @ 2% on the FOB value of the total export was allowed. As per the Scheme, the incentive was given to export products in a specified market. The export of products which are covered under FPS list would be given incentive of 2% on FOB value of the export. In other words, it is an incentive given by the Government for exploring the new markets across the globe. The question arises for consideration is when the assessee was given incentive for exploring the new markets across the globe, whether such incentive would be a capital receipt or revenue receipt? The Apex Court in the case of Ponni Sugars & Chemicals Ltd. (supra) had an occasion to examine an Identical situation and observed that if the object of the subsidy was to enable the assessee to carry on the business more profitably, then the receipt is on the revenue account. On the other hand, if the object of assistance was to enable the assessee to set up a new unit or expand the existing unit, then the receipt is on the capital account. In the case before us, the Government of India provided the incentive for exploring the new markets across the globe. Exploring a new market for a specified area would naturally expand the market area of the assessee. The incentive given to the assessee is not for running the business profitably but for expanding the market area. Therefore, this Tribunal is of the considered opinion that the incentive given by the Government to the assessee for exploring the new market is a capital receipt, hence it _ cannot be treated as income either under Section 2(24) or 28 of the Act. In view of the above, we are unable to uphold the order of the lower authority. Accordingly, the orders of the lower authorities are set aside and the addition made by the Assessing Officer is deleted."*

42. On perusal of the above, we note that the question arose for consideration is when the assessee was given incentive for exploring the new markets across the globe, whether such incentive be a capital receipt or revenue receipt. The Tribunal, considering decision of Hon'ble Supreme Court in the case of Ponni Sugars & Chemicals Ltd.(supra) held the incentive given by the Government of India for exploring new market across the globe, is not for running the business but for the expanding the market area, is a capital receipt and cannot be treated as income either under section 2(24) or 28 of the Act. As discussed above, the same finding has been followed by this Tribunal in assessee's own case for AY 2014-15 & 15-16, thereby, we summarise our finding in answering the grounds of appeal with reference to the arguments of the ld. DR and ld. AR, that we hold that the decision of Hon'ble High Court of Bombay in the case of Serum Institute of India (P.) Ltd. v. Union of India (supra) is not applicable to the facts on hand as Hon'ble High Court was pleased to decide the question the constitutional validity of insertion of sub-clause (xviii) to sub-section (24) of section 2 of the Act only, but not its applicability.

43. We hold that as per the Foreign Trade Policy-2015, the benefit given by way of MEIS scrips are rewards, the meaning of which is completely different from the

meaning of the term "assistance" under the provisions of section 2(24)(xviii) of the Act. We hold that the benefit by way of MEIS scrips could not fall within the meaning of the terms "subsidy or grant or cash incentive or duty draw back or waiver or concession or reimbursement provided under section 2(24)(xviii) of the Act. We hold the ICDS-VII is not applicable as it deals with Government grants only, but not inclusive of the duty credit scrips under MEIS, which are rewards. We hold that the benefit under Foreign Trade Policy-2015 received being MEIS scrips cannot fall within the meaning of cash assistance under section 28(iiib) of the Act. We hold the sums received as a sale of MEIS scrips credited to the profit and loss account, the said treatment in the books of accounts by itself cannot be determinative of taxability of said receipt. Thus, the benefit derived by way of sale MEIS scrips in the open market is not an income with the meaning of provisions under section 2(24)(xviii) of the Act. Therefore, we find no infirmity in the order of the ld. CIT(A) for the reasons recorded therein and also for discussion made by us in the aforementioned paragraphs, the grounds raised by the Revenue fails and are dismissed.

7. We find the sole issue raised in the present appeal is similar and based on same identical facts in AY 2017-18 and we find no dispute in this regard. Since the issue involved in this appeal is squarely covered in favour of the assessee in view of the above decision of the Tribunal in assessee's own case for the assessment year 2017-18, we hold that receipts from sale of MEIS license is not an income within the meaning of provisions under section 2(24)(xviii) of the Act not taxable under profits and gains from business. Thus, we set aside the order of the ld. CIT(A) and allow the ground raised by the assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 16th October, 2024 at Chennai.

Sd/-	Sd/-
(AMITABH SHUKLA)	(S.S. VISWANETHRA RAVI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 16.10.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.