

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
श्री राजपाल यादव, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष  
[Before Shri Rajpal Yadav, Vice-President & Shri Rajesh Kumar, Accountant Member ]

**I.T.A. Nos. 1244 to 1246/Kol/2024**  
**Assessment Years: 2013-14 to 2015-16**

DCIT, Central Circle-1(4), Kolkata	Vs.	Saj Food Products Pvt. Ltd.  (PAN: AAICS 0790 G)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	23.10.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	25.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri S. K. Tulsiyan, Advocate Mita Rizvi, A.R
For the Respondent/ राजस्व की ओर से	Shri Subhendu Dutta, CITDR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

These are the appeals preferred by the revenue against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-20, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 16.02.2024 for AY 2013-14 to 2015-16. Since the issues are mostly identical and all the appeals have heard together, we dispose of all the captioned appeals by this consolidated order for the sake of convenience and brevity. First we shall take in ITA No. 1244/Kol/2024 for AY 2013-14.

2. The only issue raised by the revenue in the various grounds of appeal is against the order of Ld. CIT(A) holding that the subsidy of Rs. 3,25,19,137/- received by the assessee in the nature of sales tax assistance was capital receipt by allowing the additional ground raised by the assessee thereby ignoring the facts that the assessee has himself treated the sale tax assistance as revenue receipt.

3. Facts in brief are that the assessee has received capital subsidies in the form of sales tax assistance from the State of West Bengal towards industrial promotional assistance under West Bengal Incentive Scheme, 2004 amounting to Rs. 3,25,19,137/-. The assessee fulfilled the eligibility criteria under the scheme which provides that any industrial project in large sector shall be eligible for claim of subsidy and accordingly received certificate for claiming the subsidy and was granted eligibility certificate a copy of which is filed at page 272 of PB. The said subsidy was granted to the assessee for setting up mega project at Sankrail ,P.O. Dhulagarh, District-Howrah. The assessee is engaged in manufacturing, selling and marketing of biscuits, bakery extruded snacks, filled wafers and namkeen products throughout India. During the year, the assessee filed return of income on 28.09.2013 declaring total income of Rs. 13,43,67,910/-. A search action u/s 132 of the Act was conducted on Saj Group at Kolkata and Howrah and accordingly an assessment was framed u/s 153A of the Act vide order dated 28.12.2016 by making additions of Rs. 15,46,394/- u/s 40A(3) of the Act and Rs. 4,43,666/- u/s 36(1)(va) r.w.s.2(24)(x) of the Act. The aggrieved assessee went in appeal before the first appellate authority.

4. In the appellate proceedings, the Ld. CIT(A) admitted the additional ground by the assessee qua treating the sale tax subsidy as capital receipt by following the decision of Hon'ble Supreme Court in the case of Jute Corporation of India Ltd. Vs CIT in 187 ITR 688 (SC) as well as Goetze (India) Ltd Vs CIT 284 ITR 323(SC) and allowed the claim of the assessee by observing and holding as under:

*3.3 Observations and decision:*

*I have carefully considered the facts of the case and the submissions of the appellant. Payments have been made in cash to daily wagers. No discrepancy has been found in the amounts of*

*payments made. Only issue is that payment has been made in cash and the AO is of the opinion that provisions of the section 40A(3) has been violated. However, assessee has explained that none of the individual payments exceed Rs. 20000/-. So provisions of section 40A(3) are not violated, it is explained that cash was handed over to the labour supervisors, they are; M/s. Reliable and M/s. Manna Enterprises, and they in turn handed over cash payment to the labourers on behalf of Assessee Company. it appears that for the sake of convenience and faster disbursement of wages to daily labourers, assessee had made an arrangement by which cash was handed over to the labour supervisors, who in turn handed over the cash payments to the labourers. Thus, the Labour Supervisors have acted as agents of the Assessee Company for the purpose of disbursement of daily wages of the labourers. These Labour Sardars were not contractors but simply labour supervisors who helped the assessee in disbursement of the wages to individual labour. As they have acted as agents for the assessee, helping assessee in making payments in cash to daily wagers, such payments are covered by clause (k) of Rule 6DD. Hence, provisions of section 40A(3) would not be attracted in this case. There are several court decisions where it is held that the terms of section 40A(3) are not absolute. Considerations of business expediency and other relevant factors should be considered, in the case of Goenka Agencies v. CIT. 263 ITR. 145 (Calcutta.), Hon'ble Calcutta High Court has held that where transactions are genuine and payments are made in exceptional circumstances, no disallowance should be made U/s 40A(3) of the IT Act. In the present case, there is no doubt that the transactions are genuine and cash has only been disbursed through Labour Supervisors, who have acted as agent of the assessee, for disbursement of daily wages. In the case of CIT vs. Solution (supra), Hon'ble Rajasthan High Court has held that where assessee appointed representative/agents for 110 locations to purchase diesel from petrol pumps and these agents were required to make payment in cash for buying petrol/diesel at different locations, disallowance made u/s 40A(3) was not sustainable. In the case of Surya Merchants Ltd. vs. DCIT, Central Circle-Ghaziabad (supra), Delhi ITAT has held that where payments exceeding Rs. 20,000/- were made in cash to persons who acted as Agents of assessee for purchase of construction material on behalf of assessee, disallowance u/s 40A(3) was not sustainable. None of the individual payments to labourers exceed Rs. 20,000/- in cash. Hence, Rule 6DD (k) is attracted in assessee's case. And no disallowance is called for u/s 40A(3) of the Act. Hence, AO is directed to delete the addition of Rs. 15,46,394/-."*

5. At the time of hearing the Ld. D.R submitted that the Ld. CIT(A) has admitted the additional ground and held that the subsidy received by the assessee towards industrial promotional assistance under West Bengal Incentive Scheme, 2004 amounting to Rs. 3,25,19,137/- to be the capital in nature by ignoring the fact that the assessee has treated the same as revenue receipt in the books of account and did not make any claim in the return of income. Therefore, the order of Ld. CIT(A) is wrong and deserves to be reversed.

6. On the other hand, the ld. A.R heavily relied on the order of Ld. CIT(A) by submitting that it is a legitimate and lawful claim of the assessee which was inadvertently not claimed in the return of income but there is no bar on the assessee to

file any additional ground raising a legal issue in the appellate stage. The Ld. A.R further submitted that the treatment given to any particular receipt in the books of account by the assessee is not the determinant factor of any receipt being so as stated in the books of accounts and therefore, the Ld. CIT(A) correctly appreciated the issue and admitted the additional ground for adjudication. The Ld. A.R submitted that the Ld. CIT(A) has given a very detailed finding by following various decisions in the appellate order passed by various forums while allowing the appeal of the assessee. Therefore, the order passed by Ld. CIT(A) needs to be affirmed. The Ld. A.R relied on the following decisions in defense of his arguments:

*i) Decision of Hon'ble Supreme Court in the case of Ponni Sugars and Chemicals Ltd. (306 ITR 0392)*

*ii) Decision of Calcutta High Court in the case of Ankit Metal & Power Ltd. 109 taxmann.com 93*

*iii) Decision of Calcutta Tribunal in the case of M/s Emami Agrotech Ltd. ITA Nos. 2563 & 2564/Kol/2019*

*iv) Decision of Calcutta High Court in the case of CIT vs. Rasoi Ltd. (335 ITR 0438)*

7. We have heard the rival contentions and perused the material on record, we find that the sales tax incentive in the form of subsidy received by the assessee has been treated as revenue receipt in the books of accounts by the assessee and therefore was not claimed in the return of income as capital receipt. Thereafter there was a search action on the assessee u/s 132(1) of the Act and the assessment was framed u/s 153A read with section 143(3) of the Act vide order dated 28.12.2016 which was challenged before the Ld. CIT(A). In the appellate proceedings, the assessee has raised additional ground qua the sales tax subsidy praying before the appellate authority to admit the same and allow the said receipt as revenue receipt. In our opinion, the Ld. CIT(A) has rightly admitted the additional ground as the assessee is free at liberty and it is within its lawful right to file any additional ground on any legal issue during the appellate proceedings. In view of the above, we rely on the order of Hon'ble Supreme Court in

the case of Goetz India Ltd. vs. CIT (supra) and Jute Corporation of India Ltd. Vs CIT (supra) . Therefore, we do not find any infirmity in the order of Ld. CIT(A) so far as admission of additional ground is concerned. As regards the order of Ld. CIT(A) treating the subsidy in respect of sales tax assistance as capital receipt, we are of the view the same was received by the assessee for setting up mega plant at PO-Dhulagarh, Sankrail, District-Howrah for manufacturing biscuits and other snacks items etc. and the assessee received incentive in the form of subsidy under the West Bengal Incentive Scheme, 2004. We note that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case Ponni Sugars and Chemicals Ltd. (supra) and the decision of Hon'ble Calcutta High Court in the case of Ankit Metal and Power Ltd. (supra). In both the above decisions, the Hon'ble Court have held that amount received in the form of sales tax assistance for setting up mega plant is a capital receipt and is not a revenue receipt. Accordingly, we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.

8. The issue raised in the revenue's appeal is similar to one as decided by us in ITA No. 1244/Kol/2024 for AY 2013-14 and therefore our decision in ITA No. 1244/Kol/2024 for AY 2013-14 would, mutatis mutandis, apply to both these appeals as well. Accordingly both the appeals of the revenue are dismissed.

9. In the result, all the appeals of the revenue are dismissed.

Order is pronounced in the open court on 25<sup>th</sup> November, 2024

Sd/-

Sd/-

(Rajpal Yadav /राजपाल यादव)  
Vice-President/उपाध्यक्ष

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 25<sup>th</sup> November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Central Circle-1(4), Kolkata
2. Respondent – 5/1, A.J.C Bose Road, Mintu Park, Kolkata-700020
3. Ld. CIT(A)- 20, Kolkata
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata