

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2113/MUM/2024
Assessment Year: 2016-17**

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| Mahindra & Mahindra Limited (as successor to Mahindra Vehicle Manufacturers Limited) Company Mahindra Tower, Ground Floor, Corporate Taxation Department, P.K. Kurne Chowk, Worli, Mumbai- 400018 (PAN : AAACM3025E) | Vs. | Assistant Commissioner of Income tax, Circle 2(2)(1), Mumbai. |
| (Appellant) | | (Respondent) |

Present for:

Assessee : Shri. H. P. Mahajani, CA
Revenue : Shri. Satyaprakash R. Singh, CIT DR

Date of Hearing : 29.07.2025
Date of Pronouncement : 31.07.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A) 57, Mumbai, vide order no. ITBA/APL/S/250/2023-24/1062832636(1), dated 18.03.2024 passed against the assessment order by Circle 7(2)(2), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 21.12.2018 for Assessment Year 2016-17.

2. Grounds taken by the assessee are reproduced as under:

“Being aggrieved by the order passed u/s. 250 dated 18 March 2024 (impugned order) by the Hon'ble Commissioner of Income-tax (Appeals) 57, Mumbai, (hereinafter referred to as 'CIT(A)'), Mahindra & Mahindra Limited (as successor to Mahindra Vehicle Manufacturers Limited) (hereinafter referred to as 'Appellant') hereby submits the following grounds of appeal for your kind and sympathetic consideration. These grounds are being raised without prejudice to one another:

1. Order passed by the ld. CIT(A) is bad in law, without jurisdiction and principles of natural justice

a) The Order passed by the ld. CIT(A) is bad in law and without jurisdiction and ought to be quashed.

b) The ld. CIT(A) erred in not granting adequate opportunity to the Appellant to make explain our submissions on merits of the additional ground of appeal with documentary evidence, thereby violating principles of nature justice.

2. Disallowance of claim that Industrial Promotional Subsidy, Chakan of Rs.117,22,55,564/- was a capital receipt

a) On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in rejecting the additional ground raised to exclude from the income of the Appellant a sum of Rs. 117,22,55,564 being the subsidy received from the State Government of Maharashtra under the Package Scheme of Incentives 2007 it being a capital receipt hence not chargeable to tax for normal provisions as well as book profit u/s. 115JB of the Act.

b) The ld. CIT(A) erred in treating the said IPS as revenue receipt when identical scheme has been allowed as Capital receipt in case of the Appellant for earlier years.

c) The Industrial Promotional Subsidy ought to be treated as Capital receipt even in the light of amended section 2(24)(xviii) for normal provisions as well as book profit u/s. 115JB of the Act.

Your Appellant reserves the right to add to, alter or amend any of the above grounds of appeal, if felt necessary.”

3. In this appeal, vide ground No. 2, assessee has contested on the addition made towards disallowance of claim in respect of industrial promotional subsidy received by the assessee from the State Government of Maharashtra under the package scheme of incentives,

2007, to be treated as capital receipt, not chargeable to tax. According to the assessee, industrial promotional subsidy is ought to be treated as capital receipt even in the light of amended section 2(24)(viii) for normal provisions as well as book profit u/s. 115JB of the Act.

4. Assessee did not raise this issue in the assessment proceedings though it had credited receipt of this amount in its profit and loss account and it was only at the first appellate stage where this issue was raised by way of an additional ground. Ld. CIT(A) dealt with this additional ground in para 9 of its order. Assessee before the Id. CIT(A) submitted that sum of Rs.117,22,55,564/- was credited to the profit and loss account being subsidy received from the State Government of Maharashtra under the package scheme of incentives, 2007. In the return of income, this amount was offered to tax as it was not reduced in the computation. Assessee did not raise this before the Id. Assessing Officer under the belief that this subsidy would fall within the definition of income in terms of section 2(24)(viii) introduced with effect from Assessment Year 2016-17 by the Finance Act, 2015. By raising the additional ground before the first appellate authority, assessee claimed that this subsidy amount received by the assessee from the State Government of Maharashtra under package scheme of incentives,2007 is a capital receipt and thus, not chargeable to tax under the Act.

4.1. Assessee made detailed submission, explaining the nuances of the scheme under which the said amount was received along with the amendment brought in by Finance Act, 2015 effective from Assessment Year 2016-17. The same is reproduced in the first appellate order itself. In respect of the amended definition of income u/s.2(24)(viii),

assessee made an elaborate submission to explain the meaning of 'assistance' to justify that the subsidy so received is a capital receipt. Upon considering the submissions made by the assessee, ld. CIT(A) admitted the additional ground for its adjudication.

4.2. While dealing with the merits on the issue, ld. CIT(A) after capturing the facts relating to the claim u/s. 2(24)(viii), placed strong reliance on the decision of Hon'ble Supreme Court in the case of Ponni Sugar and Chemicals Ltd. [2008] 306 ITR 392 (SC) and in the case of Sahney Steel and Press Works Ltd. [2008] 228 ITR 253 (SC) to dislodge the claim of the assessee and held to treat it as the revenue receipt chargeable to tax. Ld. CIT(A) in its deliberation took note of certain factual details and documents which assessee did not furnish to justify the claim as to details about where the unit was located and details of manufacturing activity carried in the unit. Further, assessee could not furnish details of capital investment made and also details of employment generated. He further observed that in absence of eligibility certificate, the claim could not be verified and the quantum of incentive could not be determined.

4.3. Being aggrieved by the decision of the ld. CIT(A), assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel for the assessee at the outset prayed for restoration of this specific issue back to the file of ld. CIT(A) so as to avail an opportunity to make the submissions afresh along with all the relevant and corroborative documentary evidences to explain its claim. It was also submitted by the ld. Counsel that ld. CIT(A) has not dealt with the amended definition of income u/s. 2(24)(viii) in proper

perspective taking into account the features of the scheme under which assessee had received the subsidy.

5.1. Ld. Counsel for the assessee thus prayed for restoration of this issue back to the file of ld. CIT(A) for *de novo* adjudication. On this, ld. CIT DR asserted that a judicious view is taken by the ld. CIT(A) after taking into consideration the submissions made by the assessee and thus, it need not be restored back.

6. We have perused the observations and findings of the ld. CIT(A) as well as the submission made by the assessee as reproduced in the order of ld. CIT(A). We find that claim of the assessee is more in respect of the amended definition whereby it has attempted to justify the claim even within the amended definition of income, effective from Assessment Year 2016-17 which has not been elaborately discussed and dealt with by ld. CIT(A) while adjudicating on the issue. Further, we note that ld. CIT(A) has made observations in respect of certain documents and details which assessee could not furnish and therefore, the matter could not be taken up holistically in absence of such details and documents.

6.1. Considering the facts of the case and the position of law, in the interest of justice and fair play, we find it appropriate to accept the prayer made by the ld. Counsel to remit the matter back to the file of ld. CIT(A) on this issue for *de novo* meritorious adjudication. Needless to say, assessee be given reasonable opportunity of being heard to make any further submission, if required. Accordingly, ground no. 2 raised by the assessee is allowed for statistical purposes.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 31 July, 2025

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 July, 2025

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai