आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member

ITA No.1780/Kol/2025
Assessment Year: 2014-15

DCIT, Circle-5(1), Kolkata..……..……..……Appellant

vs.

M/s Dhunseri Ventures Ltd……....……...…..…..Respondent
4A, Dhunseri House, Woodburn Park,
Kol - 700020..
[PAN: AABCK1597K]

Appearances by:
Shri Akkal Dudhwewala, FCA, appeared on behalf of the appellant.
Shri Raja Sengupta, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : October 08, 2025
Date of pronouncing the order : October 16, 2025

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the revenue is directed against the order dated 24.12.2024 of the Commissioner of Income Tax-22, Kolkata ['CIT(A)'] passed under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2017–18.

2. The appeal has been filed by the revenue with a delay of 37 days. The revenue has filed an affidavit for condonation of the delay. After considering the reasons cited in the affidavit for condonation of delay, we find that the reasons are valid and consequently, the delay in filing the appeal is hereby condoned and we proceed to dispose of the appeal on merits.

3. Brief facts of the case are that for the relevant to the assessment year, the assessee filed its return of income under normal provisions of Rs.16,99,91,480/- and income u/s 115JB of Rs.64,10,09,300/-. The case of the assessee was selected for scrutiny through CASS. Notice u/s 143(2) was issued. Going over the balance sheet of the assessee, the Assessing Officer observed that the assessee company for the year ended 31.03.2014 had invested in shares during the financial year which has potential of earning exempt income. It has been further observed that during the financial year 2013-14, the assessee company has received dividend of Rs.2,20,000/- and Rs.3,24,00,000/- on profit on sale of current investment as reflected in audited account. The assessee has been asked to furnish explanation and the assessee furnished explanation. The Assessing Officer after considering the submission made by the assessee, the disallowance u/s 14A has been computed at Rs.3,04,053/-. The Assessing Officer has further held that on verification of 26AS statement, it is seen that the assessee has not accounted the incomes earned from Allahabad Bank, receipt from M/s Amway India Enterprises Pvt. Ltd., interest from PNB & SBI, receipt from M/s Innovative Tech Pack Ltd. and calculated the total at Rs.5,45,696/- and added the amount in the total income of the assessee. The Assessing Officer has assessed the total income at Rs.46,62,79,390/-.

4. Aggrieved by the above order, the assessee preferred appeal before the ld. CIT(A) wherein the appeal of the assessee has been partly allowed. The ld. CIT(A) has deleted the addition of Rs.29,54,38,158/- on account of sales tax remission.

5. Being aggrieved by the said order, the revenue preferred appeal before us by taking the following grounds of appeal:

Grounds of Appeal

1. The Ld. CIT(A) erred in fact as well as in law by holding that sales tax remission Rs. 29,54,38,158/- is capital receipt when as per provision of clause (xviii) of sub-section 24 of section 2 of the Act, income includes assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver of 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.

2. The Ld. CIT(A) erred in fact as well as in law by holding that sales tax remission Rs. 29,54,38,158/- is capital receipt and therefore is not liable to tax under the deeming provisions of section 115JB of the Act when as per provision of clause (xviii) of sub-section 24 of section 2 of the Act, such sales tax remission is found to be revenue receipt and therefore is liable to tax under the deeming provisions of section 115JB of the Act.

3. That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or hearing of this appeal.

(Ashis Chakraborty)
DCIT, Circle-5(1), Kolkata

6. The ld. AR supports the impugned order thereby submitting that there is nothing in the impugned order to interfere as in the course of assessment, the assessee furnished submission along with the statement by giving details of subsidy received from the Govt. of W.B and submitted the relevant supporting documents. The ld. AR further submits along with such details assessee also furnished submission explaining the purpose of subsidy granted by the State Govt. and as to why it was treated to be in the nature of capital receipt. The ld. AR further submits that subsidy was granted for setting up new industrial unit but the mode of paying the subsidy was by way of remission of sales tax collection. The ld. AR further submit that in the present case, the object of the subsidy was to promote and encourage of setting up new industrial project in the

State and the subsidy is offered to modify the company to take risk by setting up new industry in less developed place or district. The subsidy in the form of remission of VAT & CST is collected with the primary intention of promoting industrialisation in the State of W.B. The ld. AR further submit that the identical issue arose in the assessment year 2009-10 wherein the Assessing Officer's predecessors had accepted the sales tax subsidy as revenue receipt liable to tax and on appeal, the predecessors of the ld. CIT(A) admitted the claim of the company by following the decision rendered by the jurisdictional Calcutta High Court in the case of CIT vs. Rasoi Ltd. (335 ITR 438). The ld. AR further submits that the Hon'ble ITAT, Kolkata in the matter of same assessee upheld the order of the ld. CIT(A) by holding the sales tax subsidy to be in the nature of capital receipt not liable to tax. The ld. AR further submits that subsequent year i.e. assessment years 2010-11, 2011-12 and 2012-13, the then Assessing Officer has accepted the claim of the assessee that subsidy was in the nature of capital receipt not liable to tax. The ld. AR further submits that subsidy being in the nature of pure capital receipt having common income element and the order of the ld. CIT(A) is completely based on findings of the Calcutta High Court passed against the same assessee, hence, the order of the ld. CIT(A) needs not to be interfered.

8. Upon hearing the submissions of the counsels of the respective parties, we have perused the impugned order and find that the assessee was granted incentives under the West Bengal Incentive Scheme, 1999 for setting up new industrial undertaking for manufacturing new units at Haldia, W.B. It is important to mention here that the object of the scheme is that the said incentive was granted for setting up industries in backward areas and to promote industrialisation in the State of W.B. It

is pertinent to mention here that in the course of proceedings, the assessee has explained the object for which the subsidy was given and it has also been explained that the incentive granted in terms of West Bengal Incentive Scheme for setting up new industrial project. It is important to mention here that the assessee has brought that the identical issue was decided in their own case of the assessee for the assessment year 2009-10 and the Hon'ble ITAT, Kolkata in their decision rendered in ITA No.1224/Kol/2024 has held that the sales tax subsidy received under the West Bengal Incentive Scheme, 1999 for setting up an industry in Haldia was in the nature of capital receipt not liable to tax. The assessee has also pointed out that the then Assessing Officer's assessment framed for assessment years 2010-11, 2011-12 & 2012-13 has accepted the claim of the assessee that the sales tax subsidy is capital in nature. We have gone through the order passed by the ld. CIT(A) and find that the ld. CIT(A) has not only discussed the documentary evidence rather discussed the judicial pronouncement and thereafter, allowed the appeal of the assessee on this issue. The relevant portion of the ld. CIT(A)'s order is hereinbelow:

> *"The appellant has brought to my notice that the above appellate order of the Hon'ble ITAT, Kolkata has attained finality and no further appeal was preferred by the AO. It is further noted that, the appellant had raised this identical claim in the income-tax assessments framed u/s 143(3) for AYs 2010-11, 2011-12 & 2012-13, in which the AO is noted to have accepted the same viz., the sales tax subsidy was held to be capital in nature not liable to tax. Following the above judgments (supra) and the view taken in appellant's own case for earlier years, I find merit in the claim of the appellant that the remission of sales tax received during the year of Rs.29,54,38,158/- was in the nature of capital receipt not liable to tax since the object of granting subsidy is to encourage setting up new industries for industrial growth of industrially non-developed area.*
>
> *Now coming to the issue relating to treatment of this subsidy while computing book profit u/s 115JB, I note that in the context of similar State Industrial Scheme, the Hon'ble Calcutta High Court in the case of* ***Ankit Metal and Power Ltd (416 ITR 591)*** *held that subsidies received for*

setting up new industry is not in the nature of income and therefore cannot be deemed as income for the purposes of computing book profit u/s 115JB of the Act. In the decided case the appellant had received interest subsidy under the WB Incentive Scheme, 2000 and power subsidy under the Power Intensive Industries Scheme, 2005 for setting up Sponge Iron Plant in Bankura. Before the Hon'ble Tribunal, the appellant claimed that receipt of such subsidies in form of remission of interest and power/electricity duty payments etc. was capital receipt not liable to tax both under the normal computational provisions as well as book profit u/s 115JB of the Act. The Tribunal answered the issue in favour of the appellant. On appeal by the Revenue, the Hon'ble High Court upheld the order of this Tribunal by observing as under:

> *"26. Now the second issue which requires adjudication is as to whether the aforesaid incentive subsidies received by the assessee from the Government of West Bengal under the schemes in question are to be included for the purpose of computation of book profit under section 115JB of the Income-tax Act, 1961 as contended by the revenue by relying on the decision in the case of Appollo Tyres Ltd. (supra).*
>
> *27. In this case since we have already held that in relevant assessment year 2010-11 the incentives 'Interest subsidy' and 'Power subsidy' is a 'capital receipt' and does not fall within the definition of 'Income' under section 2(24) of Income-tax Act, 1961 and when a receipt is not on in the character of income it cannot form part of the book profit under section 115JB of the Act, 1961. In the case of Appollo Tyres Ltd. (supra) the income in question was taxable but was exempt under a specific provision of the Act as such it was to be included as a part of the book profit. But where a receipt is not in the nature of income at all it cannot be included in book profit for the purpose of computation under section 115JB of the Income-tax Act, 1961. For the aforesaid reason, we hold that the interest and power subsidy under the schemes in question would have to be excluded while computing book profit under section 115 JB of the Income-tax Act, 1961."*

It is further noted that this impugned issue also stands covered in appellant's favour by the decision rendered by the Hon'ble ITAT Kolkata in appellant's own case in ***ITA No.1224/Kol/2014 dated 03.05.2017*** *wherein also it was held that the subsidy received by the appellant in form of sales tax remission for setting up new industry in the West Bengal was in the capital field and therefore not liable to tax under the deeming provisions of section 115JB of the Act as well. The relevant findings of this Tribunal is noted to be as follows:*

> *"9.2 Similarly the impugned receipt of subsidy will not be taxable being capital in nature under the provisions of MAT. Under the Act,*

income is chargeable to tax when it comes within the definition of income as specified u/s 2(24) of the Act. The Hon'ble Supreme Court in the case of Padmaraje R Kadambande Vs CIT reported in 195 ITR 877 (SC) has held that capital receipts are not income within the meaning of section 2(24) of the Act and hence not chargeable to tax. When a receipt cannot be brought to tax under the computation of income under the normal provisions as well as under the deeming provisions of the Act, then such receipt is out of the purview of the provisions of section 115JB of the Act. We find the decisions in support of this proposition that a capital receipt which is not chargeable to tax under any provisions of the Act would not be liable for book profits tax u/s 115JB of the Act which was rendered after considering the decisions of Hyderabad Special Bench in Rain Commodities Rain Commodities Ltd vs DCIT, 41 DTR 449, and the decision of Hon'ble Apex Court in Apollo Tyres Ltd. vs. CIT (2002) reported in 255 ITR 273 (SC). The Hon'ble Kolkata Tribunal also in the case of Binani Industries Ltd., vs DCIT issued in favour of assessee as detailed under :

The issue in the above case was raised as under :

"The last issue to be decided in this appeal is as to whether, the forfeiture of share warrants amounting to Rs. 12,65,75,000/-, being a capital receipt, would be liable for taxation u/s 115JB of the Act just because it has been credited in the profit and loss account as an extraordinary item, in the facts and circumstances of the case.

The relevant operative portion of the order reads as under :

"28. In view of the foregoing discussions, we find merit in the contentions of the assessee that the profit arising on transfer of capital asset to its wholly owned Indian subsidiary company is liable to be excluded from the Net profit., i.e., the Net profit disclosed in the Profit and Loss account should be reduced by the amount of profit arising on transfer of capital asset and the amount so arrived at shall be taken as "Net profit as shown in the profit and loss account" for the purpose of computation of book profit under Explanation 1 to sec. 115JB of the Act. Alternatively, since the said profit does not fall under the definition of "income" at all and since it does not enter into the computation provisions at all, there is no question of including the same in the Book Profit as per the scheme of the provisions of sec. 115JB of the Act. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to exclude the above said profit from the computation of "Book Profit" for the reasons discussed above.

In the instant case, the assessee also has duly disclosed the fact of forfeiture of share warrants amounting to Rs. 12,65,75,000/- in its

notes on accounts vide Note No. 6 to Schedule 11 of Financial Statements for the year ended 31.3.2009. Hence respectfully following the aforesaid decision of the Mumbai Tribunal, the profit and loss account prepared in accordance with Part II and III of Schedule VI of Companies Act 1956, includes notes on accounts thereon and accordingly in order to determine the real profit of the assessee as laid down by the Hon'ble Apex Court in the case of Indo Rama Synthetics (I) Ltd vs CIT reported in (2011) 330 ITR 363 (SC), adjustment need to be made to the disclosures made in the notes on accounts forming part of the profit and loss account of the assessee and the profits arrived after such adjustment , should be considered for the purpose of computation of book profits u/s 115JB of the Act and thereafter, the Learned AO has to make adjustments for additions / deletions contemplated in Explanation to section 115JB of the Act."

In view of the aforesaid facts and respectfully following the various judicial precedents relied upon hereinabove, we find no infirmity in the order passed by the Ld CIT(A) in this regard and accordingly we uphold the same. The ground raised by the Revenue is dismissed."

Respectfully following the decisions of the Hon'ble Supreme Court, Calcutta High Court and the ITAT, Kolkata in appellant's own case, the incentive received by the appellant in the form of remission of sales tax is held to be capital in nature, not liable to tax u/s 115JB as well.

For the above reasons, the AO is accordingly directed to delete the addition of sales tax subsidy of Rs.29,54,38,158/- made to the total income both under normal provisions and book profit u/s 115JB of the Act and accordingly re- compute the assessable income for the relevant year. These grounds are therefore ***allowed****."*

8.1 Going over the discussion made above, we do not find any infirmity in the order of the ld. CIT(A) and the same is upheld.

9. In the result, the appeal of the revenue is dismissed.

Kolkata, the 16th October, 2025.

Sd/-	Sd/-
[Rajesh Kumar]	**[Pradip Kumar Choubey]**
Accountant Member	**Judicial Member**

Dated: 16.10.2025.
RS

Copy of the order forwarded to:
1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches