IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI PARTHA SARATHI CHAUDHURY, JM

IT(SS) A No. 7 to 10/PUN/2019
A.Y. 2011-12, 2012-13, 2014-15 & 2015-16

The Dy. CIT Central Circle 2,
Aurangabad — Appellant

Vs.

M/s. Bhagyalaxmi Rolling Mill Pvt. Ltd.
Gut No. 30, Daregaon,
Adjacent to Addl. MIDC, 'Jalna – 431 203
PAN; AADCB0390C — Respondent

Appellant by : Shri Sardar Singh Meena
Respondent by : Shri Girish Ladda

Date of Hearing : 02-05-2022
Date of Pronouncement : 06-05-2022

ORDER

PER BENCH:

These bunch of four appeals preferred by the Revenue emanates from the consolidated order of the ld. Commissioner of Income Tax (A)-12, Pune dated 28-09-2018 as per the grounds of appeal on record.

2. At the very outset, parties agreed that the facts and circumstances of the case and the issues involved in all these appeals are absolutely identical and similar and therefore, after hearing the submissions of the parties herein, all these appeals were heard together and are being disposed of by this consolidated order.

3. The only issue for adjudication in all these appeals is whether the assessee having received subsidy from Government of Maharashtra under Package Scheme of Incentives of 2007 (hereinafter referred to as 'PSI 2007' for short) whether the said subsidy is capital receipt or a revenue receipt. Taking the lead case IT(SS)A No. 7/PUN/2019 for A.Y. 2011012 for the

narration of facts, we find that the assessee being a private limited company is engaged in manufacturing of steel at Jalna. The assessee-company had set up a mega project as defined in Government of Maharashtra's PSI 2007 in Jalna. Under the scheme PSI 2007 mega project the assessee has received capital incentive subsidy in different years from A.Y. 2010-11 to 2015-16. This incentive being capital receipt was credited to capital reserve in Balance sheet in each of these years. During the A.Y. 2011-12, the assessee received capital subsidy of Rs. 11,51,75,000/- and the same was claimed as capital receipt. The Assessing Officer DCIT Circle 6(1) Mumbai vide regular assessment order u/s 143(3) dated 6-2-2014 for A.Y. 2011-12 held that this subsidy is capital receipt but it needs to be reduced from fixed assets as provided in sec. 43(1) for calculating depreciation. On appeal, the CIT(A)-12 Mumbai vide order dated 17-3-2016 held that entire subsidy of Rs. 11,51,75,000/- is revenue receipt chargeable to tax. The assessee carried the matter further before ITAT Mumbai Bench and the co-ordinate Bench in ITA No. 3428/MUM/2016 vide order dated 3-3-2017 for A.Y. 2011-12 has held that subsidy of Rs. 11,51,75,000/- is capital receipt not chargeable to tax and further held it is not given to meet cost of any asset and hence it need not be reduced from value of assets for calculating depreciation i.e. Explanation 10 to sec. 43(1) is not applicable. The Mumbai Bench had, in turn, relied on the decision of Hon'ble Bombay High Court in the case of Reliance Industries Ltd. 339 ITR 632.

4. The assessee placing reliance on the aforesaid decisions of the Hon'ble Bombay High Court submitted before us that for deciding the nature of very subsidy whether capital or revenue it is the "purpose test" i.e. purpose for which subsidy is granted is most important. The purpose of the present subsidy scheme i.e. PSI 2007 by Government of Maharashtra is "dispersal of industries to less developed areas of State, ensure sustained industrial growth". The

assessee further relied on the decision of Hon'ble Apex Court in the case of CIT Vs. Chapalkar Brothers 400 ITR 279 dated 7-12-2017 and CIT Vs. Shree Balaji Alloys & Ors (2016) 138 DTR 36 wherein it was held that the object for subsidy given must be considered for determining whether it should be treated capital or revenue receipt.

5. In the present case before us, the ld. CIT(A) observed and held as follows:

> *3.1 I have considered the materials placed before me. Brief facts are that during the assessment proceedings the AD found out that the appellant has credited reserve and surplus account in the Balance Sheet by Rs. 31,00,000/-. The appellant claimed that the subsidy was received on account of setting up of new industrial unit hence; the same should be treated as capital receipt. The AD noted that the subsidy was received after the commencement of production; therefore, it was to be treated as assistance for functioning of the business which was in nature of revenue receipt. During the appellate proceedings, the appellant submitted that for the A.Y. 2011-12, addition was made in the regular assessment order u/s 143(3) dated 06.02.2014 treating the subsidy received as capital receipt, but the AD reduced the amount of subsidy received from fixed assets for calculating the amount of depreciation. In the appellate proceedings against the regular assessment, the CIT(A)-12, Mumbai held that the entire subsidy received was revenue receipt. During the appeal before the Hon'ble ITAT Mumbai B Bench vide order ITA No. 3428/MUN/2016 dated 03.03.2017 held that the entire subsidy received was in nature of capital receipt not chargeable to tax. The Hon'ble Tribunal relying on the judgment of Hon'ble Bombay High Court in the case of Reliance Industries ltd. 339 ITR 632 held that the subsidy was not given to meet the cost of any particular asset therefore, it need not be reduced from the value of asset for calculating depreciation. The appellant submitted that identical additions were made by the AD in the order passed u/s 143(3) r.w.s. 153A for A.Y.s 2010-11 to 2012-13, 2014-15 & 2015-16 which were fully covered by the decision of the Hon'ble Tribunal Mumbai (supra) Tribunal Mumbai (supra) in the appellant's own case for A.Y. 2011-12. The appellant further relied on the decision of Hon'ble Apex Court in the case of CIT vis Chapalkar Brothers 400 ITR 279 dated 07.12.2017, (IT v/s Shri Balajl Alloys & ors (2016) 138 DTR(SC) 36 wherein it was held that the object for subsidy given must be considered for determining whether it should be treated as capital or revenue receipt. The appellant contended that subsidy was given for setting new industrial undertaking and expansion of existing undertaking by the State with a view to accelerate industrial development and generation of employment. The appellant also pointed out that the AO had made addition only for the reason that the subsidy was received after commencement of production however, the same was dealt with by the Hon'ble J & K High Court in the case of (IT v Is Shri Balaji Alloys 239 CTR 70 (2011) which in turn approved by the Hon'ble Apex Court(supra). I find merit in the contentions raised by the appellant. The Hon'ble ITAT Mumbai in appellant's own case for A. Y. 2011-12 has already decided the matter in favour of the appellant, treating the subsidy received as capital receipt. This addition was already made in the regular scrutiny assessment proceeding u/s 143(3) and the same subject matter of appellate proceedings at both the CIT(A) as well as ITAT. Therefore, the AO was not legally right in making the same addition again in the 153A proceeding. Since this addition is legally unsustainable" the appellant gets relief. The AO is directed to delete the addition made of Rs. 31,00,000/-. Grounds raised by the appellant are hereby allowed."*

6 . We find that the co-ordinate Bench of Mumbai Tribunal in ITA No. 3428/MUM/2016 for A.Y. 2011-12 in assessee's own case, order dated 03-03-2017 has observed and held as follows:

> *9.. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that above facts are undisputed. The assessee received subsidy from Maharashtra Govt. for putting up mega project in backward area amounting to Rs. 11,51,75,000/- during the year under consideration. The assessee's project was eligible mega project as certified by directorate of industries. The assessee treated the subsidy as capital receipt. The AO while framing assessment disallowed depreciation by reducing the incentive received from Maharashtra State Government from the cost of the building and plant and machinery. The CIT(A) enhanced the income of the assessee by an amount of Rs. 9,91,44,875/- by holding that the subsidy received from the Maharashtra Govt. for putting up the mega project by the assessee in backward area is revenue receipt and full amount of the subsidy is taxable in this year. For applying explanation 10 to section 43(1) of the Act the AO relied on the decision of Hon'ble Delhi High Court in the case of Steel Authority of India Ltd. v. CIT (2012) 348 ITR 150 (Del) The CIT(A) for treating the subsidy as capital receipt relied on the decision of the Hon'ble Supreme Court in the case of CIT v. Sahney Steel and Press Works Ltd. [1985] 152 ITR 39 (SC). We find that the CIT(A) while deciding the nature of subsidy granted to the assessee has considered only the form in which the subsidy is granted and conditions based on which the subsidy is granted mainly being generation of employment of local persons. We find that this incentive was granted to the assessee under the Package Scheme of Incentive 2007 as notified by Govt. of Maharashtra. The object of this scheme was to encourage the dispersal of industries to the less developed areas of the States and further improving conducive industrial climate in the State for providing global competitive edge to the states Industry. The policy envisage grant of fiscal incentive to achieve higher and sustainable economic growth with emphasis on balance regional development and employment generation through greater private and public investment in industrial development. As per this scheme of industrial projects, mega project has been defined, which is with investment of more than of Rs. 100 crore or generating employment for more than 250 persons coming up in low human development district as mentioned in Annexure-II of scheme qualified as mega project. Further, the mega project claiming the benefit based on employment criteria will have to employ 75% of such employees from local persons throughout the year. In view of these facts, it is evident that a purpose of the subsidy of IPS 2007 of Maharashtra Govt. is to dispersal of industries to less developed areas of State and to ensure sustained industrial growth. According to us, the subsidy received by the assessee under IPS-2007, in view of the above scheme and given facts of the case, is for industrial development in States backward area, which is capital in nature.*
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> *10. For this we are relying on the decision of Hon'ble Bombay High Court in the case of CIT v. Reliance Industries Ltd. (2011) 339 ITR 632 (Born) wherein the same IPS-2007 was under consideration and Hon'ble Bombay High Court has held subsidy to be capital in nature by observing as under: -*
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> > *" 4. So far as question (D) is concerned, the Tribunal relied upon the Tribunal Mumbai Bench "J" (Special Bench) decision in the case of assessee itself in Dy. CIT Vs. Reliance Industries Ltd. (2004) 82 TTJ (Mumbai) (SB)765 : (2005) 273 ITR 16 (Mumbai)(SB)(AT) : The scheme gainfully reproduce the following portion: "The scheme framed by the Government of Maharashtra in 1979 and formulated by its resolution dt. 5-1-1980, has been analyzed in detail by the Tribunal in its order in RIL for the asst. yr. 1985-86 which we have already referred to in extension. On an analysis of the scheme, the Tribunal has come to the conclusion that the thrust of the scheme is that the assessee would become entitled for the sales-tax incentive even before the commencement of the production, which implies that the object of the incentive is to fund a part of the cost of the setting up of the factory in the notified backward area. The Tribunal has, at*

more than one place, stated that the thrust of the Maharashtra scheme was the industrial development of the backward districts as well as generation of employment thus establishing a direct nexus with the investment in fixed capital assets. It has been found that the entitlement of the industrial unit to claim eligibility for the incentive arose even while the industry was in the process of being set up. According to the Tribunal, the scheme was oriented towards and was subservient to the investment in fixed capital assets. The sales-tax incentive was envisaged only as an alternative to the cash disbursement and by its very nature was to be available only after production commenced. Thus, in effect, it was held by the Tribunal that the subsidy in the form of sales-tax incentive was not given to the assessee for assisting it in carrying out the business operations. The object of the subsidy was to encourage the setting up of industries in the backward area. "

5. Thus, it can clearly be seen that a finding has been recorded that the object of the subsidy was to encourage the setting up of industries in the backward area by generating employment therein. In our opinion, in answering the issue, the test as laid down by the Supreme Court in CIT vs. Ponni Sugars & Chemicals Ltd. & Ors. (2008) 219 CTR (SC) 105.' (2008) 13 DTR (SC) 1 .' (2008) 306 ITR 392 (SC) will have to be considered. The Supreme Court has held that the test of the character of the receipt of a subsidy in the hands of the assessee under a scheme has to be determined with respect to the purpose for which the subsidy is granted. The Court further observed that in such cases, what has to be applied is the purpose test. The point of time at which the subsidy is paid is not relevant. The source is immaterial. Form of subsidy is material. The Court then proceeded to observe as under: "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. "

6. Therefore, let us apply the purpose test based on the findings recorded by the Special Bench. The object of the subsidy was to set up a new unit in a backward area to generate employment. In our opinion, the subsidy is clearly on capital account. In that view of the matter, question (D) as framed, would also not arise. "

11. Similarly, Hon'ble Supreme Court in the case of CIT(A) v. Ponni sugars & Chemicals Ltd. (2008) 306 ITR 392 (SC) considering whether under a subsidy scheme, assessee a sugar mill, was obliged to utilized subsidy only for repayment of term loans undertaken by it for setting up new unit/ expansion of existing business, receipt of subsidy was held to be capital in nature. Hon'ble Supreme Court held 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 this case one has to apply the purpose test and the point of time of payment of subsidy is not at all relevant the source is immaterial and the form is also immaterial. If the object of the subsidy scheme was to enable the assessee to run the business more profitably, then the receipts was on revenue account but if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand its existing unit, then receipt of the subsidy was capital in nature.

12. In the present case before us also the assessee has set up a manufacturing unit in notified low human development district Jalana. The assessee has been granted eligibility certificate under PSI-227 No. DIIPSI-20071 Mega Projec/Ec-08120091B-401 dated 03-01-2009 on specific criteria that the assessee shall employ 250 employees and at least 75% of same should be local persons. Accordingly, the assessee on complying all conditions of scheme has received

Industrial promotion Subsidy (Capital Incentive) from Govt. of Maharashtra under PSI-2007 Scheme. The same was claimed to be capital receipt and credited to capital reserve account by the assessee. We find that in the present case, the cost of the asset is incurred and paid by the assessee and not met by the Government in form of subsidy. The method of quantification i.e. the maximum subsidy limit is the only linked with cost of fixed assets. This quantification is for putting cap on maximum amount of subsidy eligibility. This method of quantification does not mean, in any way, that subsidy is given to offset cost of asset. It is very clear from PSI scheme as well as Eligibility certificate that subsidy is given to generate local employment in low human index district anti receipt is in not for meeting or subsidizing cost of asset by Govt.

13. As regards to the issue of actual cost of the assets minus subsidy in view of explanation 10 to section 43(1) of the Act, this issue was not taken by Revenue to Hon'ble Calcutta High Court in the case of CIT v. Rasoi Ltd. (2011) 335 ITR 438 (Cal), wherein Hon'ble High Court has confirmed the Tribunal's order qua the issue of subsidy whether capital or revenue. It means the Tribunal's finding in respect to explanation 10 to section 43(1) of the Act has become final, wherein Tribunal following the decision of Hon'ble Supreme Court in the case of CI'T v. Pl Chemicals Ltd. (1994) 210 ITR 830 (SC) has considered the aspect of actual cost by observing as under: -

> *"6. From the above facts and circumstances, admitted facts are that during the year under consideration assessee company received incentive subsidy from Govt. of West Bengal under West Bengal Incentive Scheme,* 1999 *(WBIS) as encouragement for setting up of industrial project. It is also a fact that maximum limit of the subsidy was restricted with reference to the value of fixed capital investments in land, building, plant and machinery but no part of the subsidy was specifically intended to subsidize the cost of any fixed asset, therefore, it cannot be said that the subsidy was to meet a portion of cost of the asset. According to us, the assessee has rightly not reduced the amount of subsidy received from the actual cost/WDV of the fixed assets while claiming depreciation. It is also a fact that revenue during scrutiny assessments of the assessee for AY 2003-04 and 2004-05, the above stated subsidy was considered as capital receipt accepting the contention of the assessee. For the sake of consistency also the AO should not have changed the stand now. Even Hon'ble Supreme Court in the case of CITv. P.J Chemicals Ltd.* [1994] *210 ITR 830/7 6Taxman 611 has considered this issue and held that where Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the actual cost. Therefore, the said amount of subsidy cannot be deducted from the actual cost under sec.* 43(1) *for the purpose allowing depreciation. It is further held that if Government subsidy* is *an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified as a percentage of such cost, it does not partake the character of payment intended either directly or indirectly to meet the "actual cost". By implication, the above judgment also provides that if the subsidy is intended for meeting a portion of the cost of the assets, then such subsidy should be deducted from the actual cost, for the purpose of computing depreciation. As per Hon'ble Supreme Court, law is that if the subsidy is asset-specific, such subsidy goes to reduce the actual cost. If the subsidy* is *to encourage setting up of the industry, it does not go to reduce the actual cost, even though the amount of subsidy was quantified on the basis of the percentage of the total investment made by the assessee.*

> *7. The law is already settled on the subject. Now, the only wavering is with reference to Explanation 10 provided under sec.43(1). The said Explanation provides that where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority*

established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee. It is further, provided thereunder, that where such subsidy or grant or reimbursement of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee. In order to invoke Explanation 10, it is necessary to show that the subsidy was directly or indirectly used for acquiring an asset. This is again a question of fact. The relatable subsidy to such asset can be reduced from the cost only if it is found that the cost for acquiring that asset was directly or indirectly met out of the subsidy. Likewise in the proviso, it is necessary to show that the subsidy has been directly or indirectly used to acquire an asset but it is not possible to exactly quantify the amount directly or indirectly used for acquiring the asset. Here also, a finding of fact is necessary that an asset was acquired by directly or indirectly using the subsidy. The above Explanation and the proviso thereto do not dilute the finding of the Hon'ble Supreme Court in the case of P. J Chemicals Ltd. (supra) that asset-wise subsidy alone can be reduced from the actual cost. The above Explanation and the proviso therein attempt to explain the law. They are not bringing any new law different from the law considered by the Hon'ble Supreme Court in the above cases."

14, From the above, we are of the view that it is only where subsidy is given specifically to offset the cost of an asset, such payment would fall within the expression 'met', whereas the subsidy received merely to accelerate the industrial development of the state cannot be considered as payments made specifically to meet a portion of the cost of the asset. Therefore, incentive in the form of subsidy cannot be considered as a payment directly or indirectly to meet any portion of the actual cost and thus it falls outside the ambit of Explanation 10 to Section 43(1) of the Act. In the light of the above discussion, for the purpose of computing depreciation allowable to the assessee, the subsidy amount cannot be reduced from the cost of the capital asset. Accordingly, on both the issues we are of the view that the subsidy received by the assessee is nature and it cannot be reduced capital in from the cost of the fixed assets for computing depreciation. Accordingly this inter-connected issue of assessee's appeal is allowed."

7. We further observe that the relevant observations of the Hon'ble Apex Court in the case of CIT Vs. Chapalkar Brothers 400 ITR 279 dated 7-12-2017 are as follows:

22. Mr. Ganesh, learned senior counsel, also sought to rely upon a judgment of the Jammu & Kashmir High Court in Shree Balaii Alloys & Ors. vs. CfT (2011) 239 CTR (J&K) 70: (2011) 51 DTR (J&K) 217: (2011) 333 ITR 335 (J&K) . While considering the scheme of refund of excise duty and interest subsidy in that case, it was held that the scheme was capital in nature, despite the fact that the incentives were not available unless and until commercial production has started, and that the incentives in the form of excise duty or interest subsidy were not given to the assessee expressly for the purpose of purchasing capital assets or for the purpose of purchasing machinery.

23. After setting out both the Supreme Court judgments referred to hereinabove, the High Court found that the concessions were issued in order to achieve the twin objects of acceleration of industrial development in the State of Jammu and Kashmir and generation of employment in the said State. Thus, considered, it was obvious that the incentives would have to be held capital and not revenue. Mr. Ganesh, learned senior counsel pointed out that by an order dt. 19th April, 2016 [reported as CIT vs. Shree Balaji Alloys & Ors. (2016) 138 DTR (SC) 36 : (2016) 287 CTR (SC 459Ed], this Court stated that the issue raised in those appeals was covered, Inter alia, by the judgment in Ponni Sugars (supra), and the appeals were, therefore, dismissed.

> *24. We have no hesitation in holding that the finding of the Jammu and Kashmir High Court on the facts of the incentive subsidy contained in that case is absolutely correct. In that once the object of the subsidy was to industrialize the State and to generate employment in the State, the fact that the subsidy took a particular form and the fact that it was granted only after commencement of production would make no difference. (Emphasis supplied).*

8. Even in the case of **Shree Balaji Alloys & Oss. (2016) 287 CTR 459 (SC)** the Hon'ble Supreme Court held that the object of subsidy is industrialization and eradicating unemployment then the subsidy is capital receipt merely notwithstanding the fact that it is available in installment only after the commencement of production.

9. We also find that Pune Tribunal in **ITA No. 1766/PUN/2018 for A.Y. 2014-15 in the case of Hyundai Construction Equipment India Pvt. Ltd. Vs. ACIT** dealt with this issue on an absolutely identical facts and circumstances where the assessee has received subsidy from Government of Maharashtra under PSI 2007. In this decision, the Tribunal relied on the decision of Hon'ble Supreme Court in the case of **CIT Vs. Ponni Sugars and Chemicals Ltd (2008) 326 ITR 392 (SC)** where the "purpose test" has been reiterated by the Hon'ble Apex Court holding that the relevant consideration should be the purpose of subsidy and not its source or mode of payment. When this test was applied it emerged that the purpose of subsidy is industrial growth; it is linked with the setting of industrial units and the amount of subsidy is linked with the amount of investment made in the eligible unit. Another observation by the Tribunal in this decision was that in the Finance Act 2015 clause (xviii) to sec. 2(24) w.e.f. 1-4-2016 relevant from A.Y. 2017-18 onwards was introduced providing that the assistance in the form of subsidy or grant of cash incentive etc. other than the subsidy which has been taken into consideration in determining the actual cost of the asset in terms of Explanation 10 to sec. 43(1) shall be considered as an item of income chargeable to tax. Since the relevant assessment year with which the Tribunal was concerned was A.Y. 2014-15 the

said amended provision of sec. 2(24) sub-clause (xviii) was not applicable to the year under consideration and therefore it was held that the subsidy received by the assessee would not form part of its total income. The relevant paragraphs of this judgment are extracted as follows:

> "*5. We have verified the financial statements of the assessee from which it is apparent that the subsidy has been clubbed with other operating revenues included in the Statement of Profit and loss account. The resultant figure of loss has been taken as the opening point for the computation of total income, which means that the subsidy has been offered for taxation. The assessee also treated it as an item of operating revenue for the purposes of computing the PLI under the Manufacturing segment. Though the treatment of the subsidy as a revenue item was left intact by the AO, the TPO opined that the subsidy was an extraordinary item of income and hence liable to be excluded from the ambit of operating revenue. The contention of the assessee before the DRP that the subsidy should be considered as a capital receipt also came to be jettisoned which upheld its inclusion in the operating revenue. The net effect of these proceedings is that the subsidy received by the assessee amounting to Rs.89.73 crore has been taxed as a revenue receipt and has also been removed from the operating revenues in the computation of PLI from the Manufacturing segment.*
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> *6. The primary contention of the assessee is that the subsidy is in the nature of capital receipt and hence, should be excluded. We have gone through the nature of subsidy granted to the assessee by the Govt. of Maharashtra under Package Scheme of Incentives, 2007. A copy of the Scheme has been placed at page 753 of the paper book. The Preamble of the Scheme states that: "… The State has declared the new Industrial, Investment, Infrastructure Policy 2006 to ensure sustained Industrial growth through innovative initiatives for development of key potential sectors and further improving the conducive industrial climate in the State, for providing the global competitive edge to the State's industry. The policy envisages grant of fiscal incentives to achieve higher and sustainable economic growth with emphasis on balanced Regional Development and Employment generation through greater Private and Public Investment in industrial development." The Scheme talks of granting incentives subject to Eligibility Criteria in favour of the Eligible Units. The definition clause in the Scheme provides that "An Eligibility Certificate under the 2007 Scheme will be issued by the Implementing Agency after ascertaining that the eligible unit has complied with the provisions of the Scheme and has commenced its commercial production." Clause 5 of the Scheme states that "New projects, which are set up in these categories in different parts of the State, will be eligible for Industrial Promotion Subsidy. The quantum of subsidy will be linked to the Fixed Capital Investment. Payment of IPS every year will be equal to 25% of any Relevant Taxes paid by the eligible unit to the State or to the any of its departments or agencies." Modalities for sanction and disbursement of IPS 2007 have been given by the Govt. of Maharashtra which state that the Industrial Promotion Subsidy in respect of Mega projects under PSI 2001 and 2007 means an amount equal to the percentage of "Eligible Investments" which has been agreed to as a part of the customised Package, or the amount of tax payable under Maharashtra VAT 2002 and CST Act 1956 by the eligible Mega Projects in respect of sale of finished products eligible for incentives before adjusting of set off or other credit available for such period as may be sanctioned by the State Government, less the amount of benefits by way of Electricity Duty exemption, exemption from payment of Stamp Duty, refund of royalty and any other benefits availed by the eligible Mega Projects under PSI 2001/2007, whichever is lower. A careful perusal of the PSI, 2007 emphatically manifests that the subsidy has been granted to encourage industrial growth in less developed areas of the State. The quantification of subsidy is linked with the amount of investment made in setting up of the eligible units. However, the disbursal of the subsidy is in the form of refund of VAT and CST paid on sale of excavators. Taking assistance from the Note given in the Financial statements, the assessee claimed before the DRP that the subsidy was a capital receipt and hence not chargeable to tax. The DRP rejected the contention of the assessee on the ground that it was received after setting up of the unit and was in the form of refund of VAT and CST. In our considered opinion,*

the decisive factor for considering the nature of subsidy as a capital or revenue receipt is the 'purpose' for which the subsidy has been granted and not the manner of its disbursal. The Hon'ble Supreme Court in Sahney Steels and Press Works vs. CIT (1997) 228 ITR 253(SC) has held in the facts of that case that the operational subsidy received after the commencement of business was a revenue receipt but simultaneously laid down the ratio decidendi of applying the 'purpose test' for ascertaining the true nature of subsidy. The purpose test has been reiterated by the Hon'ble Supreme Court in CIT Vs. Ponni Sugars and Chemicals Ltd. (2008) 326 ITR 392 (SC) by holding that the relevant consideration should be the purpose of subsidy and not its source or mode or payment. When we apply such a test on the facts and circumstances of the case, it demonstrably emerges that the purpose of subsidy is industrial growth; it is linked with the setting up of industrial units; and the amount of subsidy is linked with the amount of investment made in the eligible unit. Simply because the subsidy has been disbursed in the form of refund of VAT and CST, it will not alter the purpose of granting the subsidy, which is nothing but establishment of new industrial units in less developed areas of the State. The authorities below have been swayed by the fact that the subsidy was granted post commencement and is in the nature of refund of VAT and CST and overlooked the purpose of its granting, which is nothing but momentum in industrial pace in less developed parts of the State. Testing the factual panorama on the touchstone of the ratio laid down by the Hon'ble Supreme Court in the above referred cases, we are of the considered opinion that the subsidy of Rs.89.73 crore is a capital receipt and not chargeable to tax.

7. At this stage, it is relevant to mention that we are concerned with the A.Y. 2014-15. The Finance Act, 2015 has inserted clause (xviii) to section 2(24) w.e.f. 01-04-2016 providing that the assistance in the form of subsidy or grant of cash incentives etc., other than the subsidy which has been taken into consideration in determining the actual cost of the asset in terms of Explanation 10 to section 43(1), shall be considered as an item of income chargeable to tax. Since the amended provision of section 2(24)(xviii) is not applicable to the year under consideration, the sequitur is that the subsidy received by the assessee would not form part of its total income. We, therefore, overturn the impugned order and direct to treat the subsidy as an item of capital receipt not chargeable to tax."

10. Reverting to the facts of the present case, we find that in view of the above referred judgment, the whole purpose and the grant of subsidy under PSI 2007 by Government of Maharashtra was to promote industrial growth in the less developed areas of the State and also to provide employment in the area. Once this purpose is established the subsidy has to be a capital receipt. However, the position has changed w.e.f. 01.04.2016 relevant to A.Y. 2017-18 onwards with the amended provision of sub-clause (xviii) to sec. 2(24) of the Act. However, at present, we are concerned with A.Y. 2011-12 to 2015-16. Therefore, the amended provision of sec. 2(24) sub-clause (xviii) is not applicable to the years under consideration and thus as a natural consequence the subsidy received by the assessee would therefore, not form part of its total income. In view of the aforestated facts and circumstances and the judicial pronouncements, we do not find any reason to interfere with the findings of the

ld. CIT(A) and the reliefs provided to the assessee is sustained. Therefore, the appeal of the Revenue in **IT(SS) A No. 07/PUN/2021 for A.Y. 2011-12 is dismissed.**

11 Both the parties have agreed that the facts and circumstances and the issues in IT(SS) A No. 08 to 10/PUN/2019 for A.Y. 2012-13, 2014 & 2015-16 are absolutely identical in the case of the assessee in IT(SS) A No. 07/PUN/2019 for A.Y. 2011-12. Therefore, on hearing the parties our decision in IT(SS) A No. 07/PUN/2019 for A.Y. 2011-12 shall apply *mutatis mutandis* to IT(SS) A No. 8 to 10/PUN/2019 for A.Y. 2012-13, 2014 & 2015-16.

12. In the combined result, all the appeals of the Revenue are dismissed.

Order pronounced in the open Court on this 06th day of May 2022.

Sd/-	sd/-
(R.S. SYAL)	**(PARTHA SARATHI CHAUDHURY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Pune; Dated, this 06th day of May 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT (A)-12 Pune
4. The Pr. CIT Central, Nagpur
5. The D.R. ITAT 'B' Bench, Pune.
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	02-05-2022	Sr.PS
2	Draft placed before author	04-05-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS		Sr.PS
6	Kept for pronouncement on		Sr.PS
7	Date of uploading of order	09-05-2022	Sr.PS
8	File sent to Bench Clerk	09-05-2022	Sr.PS
9	Date on which the file goes to the Head Clerk	09-05-2022	
10	Date on which file goes to the A.R		
11	Date of dispatch of order		