

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 1240 of 2006****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE S.H.VORA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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THE JT. CIT (ASSTT)....Appellant(s)

Versus

COLOURMAN DYECHEM PVT. LTD.....Opponent(s)

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Appearance:

MR KM PARIKH, ADVOCATE for the Appellant(s) No. 1

SERVED BY AFFIX(N) for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE M.R. SHAH
and
HONOURABLE MR.JUSTICE S.H.VORA

Date : 08/04/2015

ORAL JUDGMENT**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench 'D' dated 08.02.2006 passed in ITA No.1156/Ahd/2000 for A.Y. 1996-1997, the Revenue has preferred the present tax appeal to consider the following substantial question of law:-

“(A) Whether ITAT was right in law and on facts in treating the amount of subsidy of Rs.19,82,600/- received from Government of Gujarat as capital receipts instead of revenue receipts (Trade Receipts) liable to income tax?”

2. The facts leading to the present appeal in nutshell are as under.

3. That the respondent-assessee filed return of income for A.Y. 1996-1997 declaring the total loss of Rs.35,60,619/-. That subsequently, notice under Section 142(1) of the Income Tax Act along with the detailed questionnaire was issued on 27.05.1998. That during the course of the assessment proceedings and as per the balance-sheet of the assessee-company, it revealed that the assessee-company received state subsidy of Rs.19,82,600/- in the assessment year under consideration. As the aforesaid subsidy was not offered as revenue receipt in the return, vide notice under Section 142(1) of the Income Tax Act dated 27.05.1998, the assessee was

asked to furnish the approval letter, sanctioned letter of subsidy and the scheme under which, the subsidy was received. That the assessee furnished the letter according to which, the capital investment subsidy of Rs.21,97,000/- was sanctioned to the assessee vide letter dated 29.08.1992 of Gujarat State Financial Corporation on behalf of the State Government. It also revealed that the said subsidy was to be disbursed in installment after fixed assets of the proposed project was acquired and paid before 01.04.1986. The condition as per the approval letter of the subsidy shall be discussed hereinafter. That thereafter, the Assessing Officer treated the subsidy of Rs.19,82,600/- as revenue receipt and it added to the income of the assessee, relying upon the decision of the Hon'ble Supreme Court in the case of Sahney Steel and Press works Ltd. and others V/s. Commissioner of Income Tax reported in (1997)228 ITR 253.

3.1. Feeling aggrieved and dissatisfied with the order of assessment passed by the Assessing Officer in treating the subsidy amount of Rs.19,82,600/- as revenue receipt and adding the aforesaid amount to the income of the assessee, the assessee preferred appeal before the learned CIT(A) and the learned CIT(A) confirmed the order passed by the Assessing Officer treating the subsidy amount as revenue receipt.

3.2. Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A), the assessee preferred the appeal before the learned Tribunal and the learned Tribunal, by impugned judgment and order and considering the decision of the co-ordinate bench in ITA No.3565/Ahd/2003 and

1721/Ahd/2005 by which, on facts, the learned Tribunal earlier distinguished the decision of the Hon'ble Supreme Court in the case of Sahney Steel & Press works Ltd. (supra), has allowed the appeal preferred by the assessee by quashing and setting aside the order of assessment passed by the Assessing Officer confirmed by the learned CIT(A) treating the subsidy amount of Rs.19,82,600/- as revenue receipt by holding that the amount of subsidy is a capital investment/capital in nature.

3.3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Tribunal, the Revenue has preferred the present tax appeal to consider the following substantial question of law:-

“(A) Whether ITAT was right in law and on facts in treating the amount of subsidy of Rs.19,82,600/- received from Government of Gujarat as capital receipts instead of revenue receipts (Trade Receipts) liable to income tax?”

4. Shri K.M. Parikh, learned advocate appears on behalf of the Revenue. Though served, nobody appears on behalf of the respondent – assessee.

5. Shri Parikh, learned advocate appearing for the Revenue has vehemently submitted that in the facts and circumstances of the case, the learned Tribunal has materially erred in holding the amount of subsidy as capital in nature. It is submitted that the learned Tribunal has materially erred in following the decision of the co-ordinate bench in ITA No.3565/Ahd/2003 and 1721/Ahd/2005 in holding that the amount of subsidy was capital in nature. It is submitted that,

as such, while following the decision of the co-ordinate bench in ITA No.3565/Ahd/2003 and 1721/Ahd/2005 and in holding the amount of subsidy as capital in nature, the learned Tribunal has not properly appreciated the findings recorded by the Assessing Officer as well as the learned CIT(A) and the purpose for which the subsidy was granted and the purpose for utilization of the amount of subsidy.

6. It is submitted that, therefore, on facts, the learned Tribunal ought not to have followed its earlier decision when, on facts, the same may not be applicable.

6.1. It is submitted that in the present case, the subsidy was given to the assessee not to set up its business or complete the project. It is submitted that as per the findings recorded by the Assessing Officer, the assessee received subsidy after the production was commenced and its purpose was to assist in carrying on the business of the assessee. It is submitted that even out of the amount of subsidy of Rs.19,82,600/-, Rs.8,82,600/- was paid as interest on loan from Gujarat State Financial Corporation directly in the year under consideration and Rs.11 lacs was paid to the Gujarat State Industrial Co-operative Bank Ltd., Ankleshwar on 13.02.1996. It is further submitted that even as per the condition as per approval letter of the subsidy, sanctioned subsidy was to be disbursed only if the unit shows increase of 25% of the production over the existing installed capacity within one year at any point of time after implementing the expansion scheme. It is submitted that, therefore, the case would squarely fall within the law laid down by the Hon'ble Supreme Court in the case of Sahney Steel and Press works Ltd. (supra). It is submitted that,

therefore, the learned Tribunal has materially erred in treating the subsidy amount of Rs.19,82,600/- as capital in nature and has materially erred in quashing and setting aside the order passed by the Assessing Officer as well as the learned CIT(A) treating the subsidy amount of Rs.19,82,600/- as revenue in nature.

6.2. Making the above submissions, it is requested to allow the present appeal and answer the question in favour of the Revenue and against the assessee.

7. Heard Shri Parikh, learned advocate appearing for the Revenue and perused and considered the order passed by the Assessing Officer, learned CIT(A) as well as the impugned judgment and order passed by the learned Tribunal. The short question which is posed for consideration of this Court is whether the subsidy amount of Rs.19,82,600/- received by the assessee is to be considered as revenue in nature or capital in nature?.

7.1. From the order passed by the Assessing Officer and the findings recorded by the Assessing Officer, it appears that the assessee-company received from the State, subsidy of Rs.19,82,600/-. It has also come on record that the assessee – company/industry was established by the assessee before 1986. The subsidy of Rs.21,97,000/- came to be sanctioned to the assessee vide letter dated 29.08.1992 of the Gujarat State Financial Corporation on behalf of the State Government. As per the sanctioned letter/approval letter, it appears that the above subsidy was to be disbursed in installment after fixed assets of the proposed project was acquired and paid before

01.04.1986. One of the conditions as per the approval letter of the subsidy was that the sanctioned subsidy shall be disbursed only if the unit shows increase of 25% of the production over the existing installed capacity within one year at any point of time after implementing the expansion scheme. It has come on record that the assessee received the amount of Rs.19,82,600/- by way of subsidy from the Gujarat State Financial Corporation on behalf of the State in the current assessment year under consideration. It has come on record that out of the aforesaid amount of Rs.19,82,600/-, which was paid to the assessee by way of subsidy, Rs.8,82,600/- was deducted directly as interest on loan from the Gujarat State Financial Corporation and a sum of Rs.11 lacs was paid to the Gujarat Industrial Coopertive Bank Ltd., Ankleshwar on 13.02.1996. It has also come on record that thus, the assessee received subsidy after production was commenced. The purpose of subsidy does not seem to buy any capital asset or for establishment of project. In the backdrop of the aforesaid facts, the substantial question of law raised/involved in the present tax appeal is required to be considered.

8. In the case of Sahney Steel and Press works Ltd. (supra), while considering the similar question, the Hon'ble Supreme Court has observed and held that if payments in nature of subsidy from public funds are made to the assessee to assist him in carrying on his trade or business, they are, therefore, trade receipts. It has observed that the character of the subsidy in the hands of the recipient-whether revenue or capital-will have to be determined having regard to the purpose for which the subsidy is given. It has observed that source of the fund is quite immaterial. It has further observed

that, however, if the purpose is to help the assessee to set up its business or complete a project, the monies must be treated as having been received for capital purposes. But if monies are given to the assessee for assisting him in carrying out the business operations and the money is given only after and conditional upon commencement of production, such subsidies must be treated as assistance for the purpose of trade. In the case before the Hon'ble Supreme Court, the amounts of subsidy were granted year after year, only after setting up of the new industry and commencement of production and to that, it has observed and held that such a subsidy could only be treated as assistance given for the purpose of carrying on the business of the assessee and thus, the subsidies were of revenue nature and would have to be taxed accordingly.

9. Applying the ratio laid down by the Hon'ble Supreme Court in the case of Sahney Steel and Press works Ltd. (supra), the subsidy amount of Rs.19,82,600/- received by the assessee – company in the year under consideration is to be treated as revenue receipt/revenue in nature and the same was required to be included in the income of the assessee.

9.1. From the impugned order passed by the learned Tribunal, it appears that the learned Tribunal has allowed the appeal preferred by the assessee and has held the amount of subsidy of Rs.19,82,600/- as capital in nature solely relying upon and considering its earlier decision in ITA No.3565/Ahd/2003 and 1721/Ahd/2005. However, the learned Tribunal has materially erred in not properly appreciating the distinguishable facts in both the cases.

10. Under the circumstances and considering the facts and circumstances of the case narrated hereinabove, we are of the opinion that the learned Tribunal has materially erred in not following and/or distinguishing the decision of the Hon'ble Supreme Court in the case of Sahney Steel and Press works Ltd. (supra). We are of the opinion that the substantial question of law raised/involved in the present tax appeal is squarely covered against the assessee and in favour of the Revenue in view of the decision of the Hon'bel Supreme Court in the case of Sahney Steel & Press works Ltd. (supra).

11. Under the circumstances, the learned Tribunal has materially erred in treating the amount of subsidy of Rs.19,82,600/- as capital in nature and has materially erred in quashing and setting aside the order passed by the Assessing Officer confirmed by the learned CIT(A).

12. In view of the above and for the reasons stated above, the present appeal succeeds. The substantial question of law raised in the present tax appeal is accordingly held in favour of the Revenue and against the assessee and the order passed by the Assessing Officer treating the amount of subsidy of Rs.19,82,600/- as revenue receipt is hereby restored and confirmed. No order as to costs.

(M.R.SHAH, J.)

Hitesh

(S.H.VORA, J.)

