ITA 9/2012
BEFORE
HON'BLE MR. JUSTICE AMITAVA ROY
HON'BLE MRS. JUSTICE ANIMA HAZARIKA
(Amitava Roy, J)

The Revenue is in appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') being aggrieved by the order dated 30.5.2003 passed by the learned Income Tax Appellate Tribunal, Gauhati Bench, Guwahati in M.A. No. 36(Gau) of 2002 arising out of ITA No. 147 (Gau)/2000 pertaining to the assessment year 1996-97.

We have heard Mr S Sarma, learned counsel for the appellant and Dr. AK Saraf, Senior Advocate for the respondent.

The facts in short are that the respondent, an assessee under the Act is engaged in the business of manufacture and sale of asbestos sheets etc. For the assessment year 1996-97 it claimed deduction of Rs. 44,95,378/- towards transport subsidy. The Assessing Officer having disallowed the claim, it preferred an appeal before the Commissioner of Income Tax (Appeals), Guwahati who returned a finding that the transport subsidy was a capital asset and directed the Assessing Officer to exclude the same from the total income of the assessee. The learned Income Tax Appellate Tribunal, Guwahati also held the same view and rejected the Revenue's appeal being ITA No. 147(Gau)/2000. The Miscellaneous Application filed by the Revenue being M.A. No. 36(Gau)/2002 seeking a reconsideration of its decision in the backdrop of the decision of the Apex Court in Sahani Steel & Press Works Ltd. & Ors. -vs- CIT, reported in 228 ITR 253 was also rejected.

It has been pleaded on behalf of the Revenue in substance that in the face of the decision of the Apex Court in Sahani Steel & Press Works Ltd. & Ors (supra), the transport subsidy was a revenue receipt and was liable to be taxed. Contending that this state of law has been ignored by the learned Income Tax Appellate Tribunal, Gauhati Bench, Guwahati, interference with the impugned order has been sought for.

Mr Sarma while reiterating the above has relied on the decision of this Court in Commissioner of Income Tax -vs- Meghalaya Steels Ltd., (2011) 332 ITR 91.

Dr Saraf in reply has endorsed the validity of the decisions of the Revenue authorities from the level of the Commissioner of Income Tax (Appeals). According to the learned senior counsel, in absence of any finding by the Assessing Officer with regard to the purpose of the subsidy and the manner of utilization of thereof, the demur of the Revenue of non-compliance of the enunciation in Sahani Steel & Press Works Ltd. & Ors. (supra) is wholly misplaced. Contending that Division Benches of this Court had consistently, by relying on the decision in Sahani Steel & Press Works Ltd. & Ors.(supra), in the face of omission on the part of the Revenue authorities to determine the purpose of transport subsidy and the manner of utilization thereof, remitted the issue to the Assessing Authority, Dr. Saraf has urged that if deemed necessary such a course may be adopted in the instant case as well. According to him, the decision of this Court in Commissioner of Income Tax -vs- Meghmalaya Steels Ltd. (supra) is inapplicable in the contextual facts. To reinforce his pleas, Dr. Saraf has placed reliance on the decisions of this Court, amongst others, in ITA No. 4/2000 (Deputy Commissioner of Income-Tax, Special Range-I, Guwahati -vs- M/s Assam Asbestos Ltd, Guwahati) and in ITA No. 6/2004 (Commissioner of Income Tax, Guwahati-II -vs- M/s Assam Roofings Ltd.)

We have analysed the arguments advanced as well as the materials on record. Dwelling on the salient features of transport subsidy and its exigibility to tax, the Apex Court in Sahani Steel & Press Works Ltd. & Ors.(supra) held that if payments in the nature of subsidy from public funds are made to the assessee to assist him in carrying on his trade or business, they are trade receipt. Their Lordships enunciated that the character of the subsidy in the hands of the recipient-whether revenue or capital-would have to be determined having regard to the purpose for which the subsidy is given, the source of the funds being immat erial. It was observed that 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. However, if the same is 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 which would then be of revenue nature and would be taxable.

Referring to the above observations, a Division Bench of this Court in Deputy Commissioner of Income Tax, Special Range-I, Guwahati (supra), remanded the issue lodged therein to the Assessing Authority to consider the question of subsidy as in the contextual facts it was noticed that no decision with regard to the purpose and the manner of utilization thereof had been recorded. Citing with approval the above determination, another Division Bench of this Court in Commissioner of Income Tax, Guwahati-II -vs- M/s Assam Roofings Ltd. adopted the same course.

In Commissioner of Income Tax -vs- Meghalaya Steels Ltd. (supra), the subsidies involved admittedly were revenue receipts and had been granted after setting up of the new industries and subsequent to the commencement of production. The issue was whether the assessee was entitled to deduction under Section 80-IB of the Act on the transport subsidy, interest subsidy and the central excise duty refunded to it. In the facts of the case, it was held that the transport subsidy did not have any direct nexus with the proceeds or gains derived by the assessee from its industrial activity and, thus, the same was held to be beyond the purview of deduction under Section 80-IB of the Act. This decision cited by the Revenue, therefore, according to us, does not answer the issue raised herein.

On a perusal of the assessment order dated 31.3.99, it is apparent that the Assessing Officer did not make any endeavour to examine the purpose of the transport subsidy received by the respondent herein and the mode of utilization thereof as emphasised upon by the Hon’ble Apex Court in Sahani Steel & Press Works Ltd. & Ors.(supra) to determine its true import for its identification as revenue or capital receipt. The respondent-assessee’s claim was rejected by the Assessing Officer on a mechanical citation of the decision in Sahani Steel & Press Works Ltd. & Ors (supra). The decisions rendered by the higher forum though in essence sustained the claim of the respondent, no exercise to ascertain the purpose of the grant thereof and more importantly the mode of its utilization had been undertaken in details as emphasized upon by the Division Bench of this Court in the earlier deductions.

On a combined reading of the decision of the Apex Court in Sahani Steel & Press Works Ltd. & Ors. (supra) and the renderings of this Court in ITA Nos. 4/2000 & 6/2004, we are of the view that it would meet the ends of justice if the matter is remanded to the Assessing Authority for an appropriate scrutiny of the purpose for which the transport subsidy had been accorded to the respondent assessee and the manner of utilization thereof pertaining to the assessment year involved. Ordered accordingly.

The aforementioned exercise would essentially be based on contemporaneous records and after due notice and reasonable opportunity of hearing to the respondent assessee.

The appeal stands disposed in the above terms. No costs.