

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “B”, PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.1117/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

|                          |     |                                                                                                                                                              |
|--------------------------|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ACIT, Circle-11,<br>Pune | Vs. | Inox Air Products Private<br>Limited,<br>Office No.4, Ist Floor,<br>Solitaire, Pune Nagar Road,<br>Near Aga Khan Palace,<br>Pune 411 006<br>PAN : AAACI5569D |
| Appellant                |     | Respondent                                                                                                                                                   |

ITA No.1041/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

|                                                                                                                                                           |     |                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--------------------------|
| Inox Air Products Private Limited,<br>Office No.4, Ist Floor,<br>Solitaire, Pune Nagar Road,<br>Near Aga Khan Palace,<br>Pune 411 006<br>PAN : AAACI5569D | Vs. | ACIT, Circle-11,<br>Pune |
| Appellant                                                                                                                                                 |     | Respondent               |

Assessee by  
Revenue by

Shri C.H. Naniwadekar  
Shri Deepak Garg

Date of hearing

09-11-2020

Date of pronouncement

10 -11-2020

आदेश / ORDER

**PER R.S.SYAL, VP :**

These two cross appeals – one by the assessee and the other by the Revenue - arise out of the order passed by the CIT(A)-1, Pune on 27-02-2017 in relation to the assessment year 2013-14.

2. Briefly stated, the facts of the case are that the assessee is engaged in manufacturing and selling of Industrial/Medical Gases. Return was filed declaring total income of Rs.135.08 crore. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee received capital subsidy of Rs.19,21,02,802/- from the Governments of Jharkhand and Maharashtra which was taken directly to the Capital Reserve in the balance sheet. Since this amount was not offered for taxation, the AO called upon the assessee to state reasons for this stand. The assessee submitted the reasons in the shape of Note and written submissions by precisely putting forth that it received subsidy for setting up new industrial units in Bokaro and Jejuri, which was a capital receipt and hence not chargeable to tax. Not convinced, the AO treated the amount as revenue subsidy and included it in the total income. The Id. CIT(A) overturned the assessment order on this count and came to hold that the subsidy was of capital nature. He, however, invoked Explanation 10 to section 43(1) of the Income-tax Act, 1961 (hereinafter also called `the Act') and directed that the amount of such subsidy should be reduced from the cost of assets for the purpose of

depreciation. Both the sides are in appeal on their respective stands.

3. We have heard both the sides through Virtual court and scanned through the relevant material on record. Insofar as the Departmental appeal is concerned, the only grievance is against the ld. CIT(A) treating the amount of subsidy from Maharashtra and Jharkhana Governments as capital in nature. On a perusal of the schemes under which such subsidy was provided, it clearly emerges that the object of the subsidy was to accelerate industrial development in the concerned States. By applying 'purpose test' in determination of the nature of subsidy, the same cannot be construed as revenue in nature. Similar issue cropped up for consideration before the Tribunal in assessee's own case for the immediately preceding assessment year 2012-13 wherein also the ld. CIT(A) held such subsidy to be capital in nature. The Tribunal vide its order dated 15-07-2019 [ITA No.446/PUN/2017], in an appeal preferred by the Revenue, upheld the view point of the ld. CIT(A) in treating the subsidy as a capital receipt. The ld. DR fairly conceded that the facts and circumstances for the extant year are similar. He, however, tried to highlight that the

Tribunal did not consider certain important facets of the issue in its earlier order. On a specific query, it was fairly admitted that the order passed by the Tribunal in assessee's own case for the immediately preceding assessment year has neither been modified nor reversed by the Hon'ble High Court. Respectfully following the precedent, we determine this issue in favour of the assessee and uphold the impugned order to this extent.

4. The only issue raised in the assessee's appeal is against the direction of the ld. CIT(A) for reducing the amount of subsidy from the value of assets for the purpose of granting depreciation. In holding so, the ld. CIT(A) relied on Explanation 10 to section 43(1) of the Act, which reads as under :

*“Explanation 10.—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 :*

Provided that where such subsidy or grant or reimbursement is 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.”

5. On a careful perusal of the above Explanation, it is immensely clear that the same is triggered where a portion of cost of an asset has been paid directly or indirectly by the Central Government etc., in the form of a subsidy or grant. It has no application where the object of the scheme under which the subsidy is granted is to accelerate industrial development. The proviso to Explanation 10, which has been held to be applicable by the Id. CIT(A), also talks of “*such subsidy*”, which again traces its origin to the main part of the Explanation 10 that, in turn, refers to meeting cost of an asset directly or indirectly by the Government etc. *Au contraire*, where the subsidy is given for industrial development and not for meeting cost of an asset by the Government etc., the same cannot be brought within the purview of Explanation 10. The Hon’ble Bombay High court in *Pr. CIT Vs. M/s. Welspun Steel Ltd.* (2019) 264 Taxman 252 (Bom.) has taken similar view in deciding question no. (b) raised before it and held that the Tribunal was justified in holding that subsidy cannot be considered as a payment directly or indirectly to meet any

portion of the actual cost. The assessee in that case also got subsidy for industrial development. Similar view has also been taken by the Pune Benches of the Tribunal in *M/s. Alkoplus Producers Pvt. Ltd. and Another Vs. DCIT and Another (2019) 177 ITD 150 (Pune-Tribunal)*. In backdrop of the above, it is overt that subsidy, in the prevailing circumstances, does not qualify for reduction from the cost of assets in pursuance of Explanation 10 to section 43(1) of the Act.

6. The ld. DR strenuously argued that if the subsidy is to be held as a capital receipt, then as a *fortiori*, it must reduce the cost of assets in terms of Explanation 10 to section 43(1) and *ex consequenti*, depreciation ought to be allowed at the reduced cost of assets.

7. At this juncture, it is pertinent to note that the Finance Act, 2015, w.e.f. 1.4.2016 inserted clause (xviii) to sub-section (24) to section 2 defining the term 'income' and thereafter the Finance Act, 2016 w.e.f. 1.4.2017 carried out an amendment to clause (xviii). The effect of these amendments is that the newly inserted clause (xviii) now reads as under:-

`(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or 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 *other than,—*

- (a) *the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or*
- (b) *the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be;'*

8. The Finance Act, 2018 w.r.e.f. 1.4.2017 substituted sections 145A and 145B for section 145A. Relevant part of the newly inserted section 145B reads as under:-

`145B. (1).....

(2) ....

(3) *The income referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.'*

9. Now with the above amendments, subsidy falls within the definition of `income' u/s 2(24) and resultantly chargeable to tax in the year of receipt as per section 145B(3) in all cases except where Explanation 10 to section 43(1) gets magnetized, in which eventuality, it will go to reduce the cost of assets. The contention of the ld. DR about either the reduction of the amount of subsidy from the cost of assets in terms of the Explanation 10 or treating it as chargeable to tax will gain relevance in the periods covered by the afore discussed

amendments. Since such amendments are not applicable to the year under consideration, the case will be governed by the *ratio decidendi* in the judicial precedents discussed *supra*. In view of the foregoing discussion, we are satisfied that the Id. CIT(A) was not justified in directing to exclude the amount of subsidy allowed to the assessee by the States of Jharkhand and Maharashtra from the cost of assets for the purposes of allowing depreciation.

10. In the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

Order pronounced in the Open Court on 10<sup>th</sup> November, 2020.

Sd/-  
**(S.S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 10<sup>th</sup> November, 2020  
*Satish*



**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Pune
4. The Pr.CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“बी” / DR ‘B’, ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,****// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

|     |                                                  | Date       |       |
|-----|--------------------------------------------------|------------|-------|
| 1.  | Draft dictated on                                | 09-11-2020 | Sr.PS |
| 2.  | Draft placed before author                       | 10-11-2020 | Sr.PS |
| 3.  | Draft proposed & placed before the second member |            | JM    |
| 4.  | Draft discussed/approved by Second Member.       |            | JM    |
| 5.  | Approved Draft comes to the Sr.PS/PS             |            | Sr.PS |
| 6.  | Kept for pronouncement on                        |            | Sr.PS |
| 7.  | Date of uploading order                          |            | Sr.PS |
| 8.  | File sent to the Bench Clerk                     |            | Sr.PS |
| 9.  | Date on which file goes to the Head Clerk        |            |       |
| 10. | Date on which file goes to the A.R.              |            |       |
| 11. | Date of dispatch of Order.                       |            |       |

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