

**IN THE INCOME TAX APPELLATE TRIBUNAL “G”
BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI RAM LAL NEGI, JM**

आयकरअपीलसं./ I.T.A. No. 249 to 253/Mum/2019
(निर्धारणवर्ष / Assessment Year: 1999-2000 to 2003-04)

DCIT CC– 1(4), Room no. 902, 9 th floor, Pratistha Bhavan, Old CGO Bldg (Annex), M. K. Road, Mumbai-400 020	बनाम/ Vs.	M/s Grasim Industries Ltd. (successor to Aditya Birla Nuvo Ltd, formerly Indian Rayon Industries Ltd.), Aditya Birla Centre, A-Wing, 4 th floor, S. K. Ahire Marg, Worli, Mumbai-400 030
स्थायीलेखासं./जीआइआरसं./PAN No. AAACI1747H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri V. Vinod Kumar, DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Ronak Doshi, AR
Virtual Date of Hearing	:	29.07.2020
Date of Pronouncement	:	16.09.2020

आदेश / O R D E R

Per S. Rifaur Rahman, Accountant Member:

The present five appeals have been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals) - 3 in short referred as ‘Ld. CIT(A)’, Mumbai dated 15.06.2018

& 22.06.2018 for Assessment Year (in short AY) 1999-2000 to 2003-04 respectively.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order.

3. Revenue has raised the only one ground in all the appeals which are as under:-

“Whether on facts and circumstances of the case and on law, the Ld. CIT(A), is justified in treating the sales tax subsidy received as per UP Govt. Scheme as capital receipts.”

4. The brief facts relating to above ground are, during the year, assessee was engaged in the business of manufacturing Garments, Carbon Black and Insulators. The AO passed assessment order dated 21.03.2002 u/s 143(3) after making various additions/disallowances. Aggrieved by the assessment order, the assessee challenged the said assessment order before Ld. CIT(A) and thereafter, before the Hon'ble Tribunal. Before

the Tribunal, assessee claimed that sales tax incentive/ exemption received during the relevant previous year was a capital receipt and hence, not chargeable to tax. That claim was not made either in the return of income nor before the Ld. CIT(A). That claim, therefore, constituted a new ground of appeal. The Tribunal disposed off the appeal by an order dated 12.08.2011. Two additional grounds remained unadjudicated. Subsequently, those grounds were adjudicated by order passed u/s 254(2) in MA No. 135/Mum/2014 dtd 18.07.2014. Accordingly, the impugned order of the Tribunal dated 12/08/2011 were modified.

5. Further, in para no. 27 of the order of ITAT in ITA No. 6668 & 6669/Mum/2003 mentioned its order in MA No. 135/Mum/2014 is reproduced below:-

"27 We have heard the Ld senior counsel of the assessee as well as Ld DR and considered the relevant material on records. The additional ground no. 1 regarding the taxability of sales tax exemption benefit availed by the assessee, though, has been raised by the assessee for the first time before us; however, the same issue was already considered and decided by the Tribunal in assessee's own case for AY 1995- 96. Since the assessee has now filed

additional evidence, which is nothing but the sales tax exemption scheme of the Maharashtra Government and copy of exemption certificate (eligibility certificate) issued by the Govt department which were not available before the lower authorities. Therefore, in our considered opinion and in the interest of justice, this is required to be reconsidered at the level of the Assessing Officer.

27.1 We have one more reason to restore the issue to the Assessing Officer because an identical issue has already been considered and restored back to the file of the Assessing Officer in the case of the assessee for AY 1995-96 in 1TA No.3207/M/2002 vide order dated 28.2.2011. The Tribunal in paras 2.13.4 and 2.13.5 held as under:

"2.13.4. We have perused the records and considered the rival contentions carefully. The dispute is regarding raising of additional ground for the first time before tribunal regarding exclusion of the sales tax exemption of Rs. 1,14,51,012/- provided to the assessee by the UP. Government which was included in total sales in the computation of total income. The assessee had not claimed deduction on account of the said exemption either before the AO or before the CIT(A) and the amount was included in the sale figure of Rs. 928.36 crores. The assessee raised this issue for the first time before the tribunal after the order dated 23.10.2003 of the Mumbai Special Bench of the tribunal in case of DCIT Vs Reliance Industries Ltd.

(supra) as per which sales tax exemption benefit was capital receipt, not taxable was delivered. The 13 Indian Rayon & Industries Ltd case of the assessee is that the assessee could not have raised the ground before the AO or CIT(A) as the decision of the tribunal was available only after passing of the order by CIT(A),

2.13.5 We find that the principle relating to admission of additional ground being a legal ground for the first time before the tribunal is settled by the judgment of Hon'ble Supreme Court in case of NTPC (supra) in which the Hon'ble Supreme Court held that question of law arising from the facts which are on record in the assessment proceedings has to be allowed to be raised if it is necessary to consider the question in order to correctly assess the tax liability of the assessee. In this case the assessee had availed sales tax exemption of Rs. 1,14,51,012/- which was already on record before the AO as the same was included in the total sale figure of Rs. 928,36 crores. This claim of the assessee has not been controverted before us by the revenue. Therefore the fact that the assessee had availed sales tax exemption which had been shown as part of the sales was already on record before the lower authorities. In view of the decision of the Special Bench of the tribunal in case of DCIT VS Reliance Industries Ltd: (supra) which held that- sales tax subsidy granted by the State Government was of the nature of

capital receipt and could not be taxed, a legal question does arise in case of the assessee whether the sales tax exemption received by the assessee from the UP. Government was taxable or not. Such question has a direct bearing on computation of tax liability of the assessee. Therefore, in our view the legal question raised by the assessee as an additional ground has to be admitted. The adjudicatability of the ground is different from the admissibility of additional ground. In case, for adjudicating a ground already admitted, some more material is required the tribunal can always restore the issue to the file of AO for passing a fresh order after considering all the relevant facts. But on this ground, the assessee cannot be denied its right to raise the ground which arises on the basis of facts on record and which is relevant for determining the tax liability of the assessee correctly. We therefore admit the additional ground raised by the assessee. Since adjudication of the ground will require going into the incentive scheme framed by the UP Government which was not available before the lower authorities, the issue is restored to the file of AO for passing a fresh order after necessary examination and after allowing opportunity of hearing to the assessee."

27.2 Accordingly, the matter is restored to the record of the Assessing Officer to examine the additional evidences filed by the assessee then decide the issue as per law."

6. Pursuant to the order of the ITAT, the AO passed an order dated 12.11.2014 u/s 143(3) r.w.s. 254 of the Act. In that order, AO held that the Sales tax incentive received by the assessee is a revenue receipt.

7. Aggrieved by the order of AO assessee preferred the appeal before Ld. CIT(A) and Ld. CIT(A) after considering the detail submission of assessee, allowed the ground of appeal with the following observations:-

4.4.2 The AO while passing the impugned order relied on the order dated 28.03.2013 passed pursuant to the order of the Hon'ble ITAT for the AY 1998-99. I find that subsequent to the order passed by it for AY- 1999- 2000, the Hon'ble ITAT in its order in appellant's own case for AY 1995- 96, in ITA No. 3938/Mum/2013 dtd. 18.04.2018 held that the sales tax subsidy received under the subsidy scheme of the government of Uttar Pradesh was in the nature of capital receipt. I also find that the AO, while passing the impugned order, did not have the benefit of the decision of the Hon'ble ITAT in appellant's own case for the AY 1995-96. Respectfully following the decision of the Hon'ble ITAT, I allow the ground of appeal. Accordingly, I

direct the AO to exclude the sales tax subsidy received under the scheme of the government of Uttar Pradesh from the sales turnover of the appellant in the computation of appellant's total income.

8. Considered the rival submissions and material placed on record. We notice from the record that the Coordinate Bench of ITAT has considered and adjudicated the same issue in assessee's own case in ITA No. 3938/Mum/2013 dated 18.04.18 for AY 1995-96. For the sake of clarity, it is reproduced below:-

8. We have heard rival submissions and perused material on record. We have also applied our mind carefully to the decisions placed before us. It is evident, assessee's claim that the sales tax subsidy received by it is a capital receipt has been rejected by the Departmental Authorities on the ground that sales tax subsidy granted by the U.P. government being intended for assessee's business and its profitability is an operational subsidy, hence, is a revenue receipt. The elaborate reasoning on which the learned Commissioner (Appeals) has held the Grasim Industries Limited sales tax subsidy received by assessee to be of revenue nature is contained in his order passed in assessment year 1998-99 which is also under appeal before us. As could be seen from the reading of the said order of the learned Commissioner (Appeals), after examining the

sales tax subsidy scheme of the U.P. government, the learned Commissioner (Appeals) was of the view that the primary purpose of the scheme was to give incentive to industrial units to increase production of goods in the existing unit in notified Districts. He further observed that the quantification of incentive is linked to production of goods, turnover of sale of goods and the maximum exemption was limited to certain percentage of fixed capital investment. He observed, as per the U.P. Government scheme the benefit of sales tax exemption was availed by the assessee at source of purchase and sale under the notification issued by the U.P. Government Central Sales Tax Act. The learned Commissioner (Appeals) comparing the incentive scheme of U.P. Government with that of Maharashtra Government observed that while the benefit under the Maharashtra Government scheme was linked to the purchases effected from Industrial unit located in certain area of Maharashtra, the sales tax incentive provided under U.P. Government scheme is basically for the purpose of enhancing the production which would result in more product purchase from towns I district of U.P. which in turn would generate revenue and employment for people located in those towns and district. The learned Grasim Industries Limited Commissioner (Appeals) observed, the assessee availed the sales tax benefit at source by paying less sales tax at the time of purchase and sale of goods thereby indicating that the sales tax incentive was not

granted for fixed capital asset and not related to acquiring capital asset. Thus, it was held that the incentive / subsidy received cannot be treated as capital receipt. Therefore, the learned Commissioner (Appeals) distinguished the Special Bench decision of the Tribunal, Mumbai, to the facts of the assessee's case. The argument of learned Departmental Representative in sum and substance is, the assessee relied upon the Special Bench decision of the Tribunal, Mumbai, in Reliance Petroproducts Pvt. Ltd. (supra) which though was upheld by the Hon'ble Jurisdictional High Court Hon'ble Jurisdictional High Court but the Hon'ble Supreme Court reversed the decision of the Hon'ble Jurisdictional High Court. Therefore, the decision of the Special Bench in Reliance Industries Pvt. Ltd. (supra) is not binding. In our view, assessee's case can be decided independently without depending upon the decision in case of Reliance Industries Ltd. (supra) being adjudicated before the High Court. This is in view of the fact that the nature of subsidy received by the assessee is to be determined keeping in view the relevant subsidy scheme of the U.P. Government and the purpose for which such subsidy was granted. Perusal of the scheme of U.P. Government issued vide notification dated 27th July 1991, a copy of which is at Page-217 of the paper book. It is seen that Grasim Industries Limited for promoting development of certain areas of the State as specified in the said notification the Government thought it appropriate to grant exemption from payment of sales tax to new units as

well as existing units which have undertaken expansion, diversification or modernization by making investment in fixed capital exceeding 50 crore. The said notification further provided that the sales tax exemption I incentive will be allowed to a small scale unit at 150% of the fixed capital investment and in case of other unit 125% of the fixed capital investment. However, in case of certain areas including the area where the assessee's unit is located, the sales tax incentive allowable for the total period of exemption will not exceed 125% of the fixed capital investment in the case of small scale industries and 100% of the fixed capital investment in case of other units. Thus, on a careful reading of the subsidy scheme the following facts emerge:-

- i) The subsidy scheme is not applicable to the entire State but is applicable to certain areas as notified in the said notification;
- ii) The incentive is allowable to a new unit or an existing unit which has made additional fixed capital investment exceeding 50 crore; and
- iii) The exemption allowable is related to the fixed capital investment Grasim Industries Limited -

9. Undisputedly, the high-tech carbon unit of the assessee is situated in the District of Sonbhadra which is a notified area under the subsidy scheme. Further, as per the

eligibility certificate issued by the director of Industries, the assessee in compliance of the conditions of the subsidy scheme has made investment of 51,18,69,511, in additional fixed capital for undertaking, expansion, modernization, diversification of the unit. Thus, from the aforesaid facts, it is clear that the assessee has, complied to all the conditions of the subsidy scheme. Now, the issue before us is, the nature and character of the subsidy received by the assessee whether is revenue or capital. The learned Commissioner (Appeals) has held that the subsidy received as capital basically on the reasoning that the subsidy is intended for the purpose of enhancing the production which would result in more product purchase from the towns and districts of U.P. However, a perusal of the subsidy scheme does not bring out any such purport as the learned Commissioner (Appeals) tried to project. The Hon'ble Supreme Court in Ponni Sugars (supra) after analyzing various other decisions held that while determining the nature and character of subsidy the purposive test has to be applied. The Hon'ble Court held, if the object of the subsidy was to enable the assessee to make the business more profitable, then the receipt is on revenue account. Whereas, 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 Grasim Industries Limited unit, then the receipt of the subsidy was on capital account. Therefore, it is the object for which the subsidy / assistance is given determines

the nature of incentive / subsidy. The form or the mechanism through which a subsidy is given is irrelevant. The Hon'ble Supreme Court again in case of Chaphalkar Brothers (supra) held that entertainment tax subsidy granted to industries setting up multiplex theater complex is capital in nature, since, the object of granting such subsidy was in order to attract persons to come forward and construct multiplex theaters which are highly capital intensive industries. It is relevant to note, while coming to such conclusion, the Hon'ble Court relied upon its own decision in case of Ponni Sugars (supra). Keeping in perspective the principle laid down by the Hon'ble Supreme Court in case referred to above, if we examine the U.P. Government subsidy scheme under which the assessee has received the sales tax incentive it is to be noted that the purpose of the subsidy scheme is to attract people to invest and take part in industrialization of certain areas in the State. The subsidy scheme nowhere states that it is for the benefit of generating product purchase from the town I district of U.P. As held by the Hon'ble Supreme Court in case of Ponni Sugars (supra), if the object 'scheme, was to enable the assessec to set-up a new unit or to expand the unit then the receipt of subsidy was on capital account. The same is the case with the assessee as the U.P. Government subsidy scheme was for enabling the assessee to expand / modernize Grasim Industries Limited its existing unit. Therefore, the ratio laid down by the Hon'ble Supreme Court in Ponni Sugars

(supra) will squarely apply to assessee's case. In view of the aforesaid, we hold that the sales tax subsidy received by the assessee being a capital receipt is not taxable. This ground is allowed.

9. Respectfully following the above decision, the issue in the present case is exactly similar and we are inclined to accept the findings given by Ld. CIT(A). Therefore, the ground raised by revenue is **dismissed**.

10. In the result, all the appeals filed by the revenue are **dismissed**.

Order pronounced in the open court on 16.09.2020.

Sd/- (R. L. Negi) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	Sd/- (S. Rifaur Rahman) लेखासदस्य / Accountant Member 16.09.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai

6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai