आयकर अपीलीय अधीकरण, न्यायपीठ –"A" कोलकाता,

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

[Before Shri A. T. Varkey, JM and Dr. Arjun Lal Saini, AM]

ITA No. 2067/Kol/2019

Assessment Year: 2012-13

D.C.I.T, Circle-3(1), Kolkata	Vs.	M/s. SovaIspat Ltd PAN: AAHCS4673H
Appellant		Respondent

Date of Hearing (Virtual)	28.07.2020
Date of Pronouncement	19 .08.2020
For the Appellant	ShriSupriyo Pal, Ld. Add.CIT/DR
For the Respondent	Shri A.K. Tulsian, FCA, Ld.AR

ORDER

Shri A. T. Varkey, JM

This is an appeal preferred by the revenue against the order of Ld. CIT(A)-16, Kolkata dated 28-06-2019for the assessment year 2012-13.

2. Ground no. 1 of revenue's appeal reads as under:-

01. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 5,45,08,669/- made by the AO on account of Industrial Promotion Assistance (IPA) incentive treated as Revenue receipt. The Ld. CIT(A) erred in law treating the Industrial promotion Assistance (IPA) subsidy as a capital receipt.

3. At the outset, it has been brought to our notice by the Ld.AR of the assessee that this issue is no longer *res integra*. According to the Ld. AR this issue is squarely covered in assessee's own case for the AY 2010-11 in ITA No. 2520/ Kol /2018 vide order dated 29-05-2020 and this tribunal has decided the impugned issue in favour of the assessee and against the Revenue. We note that in assessee's own case for the AY 2010-11, the sole issue/ground of appeal of the revenue was as under:-

"2. The sole ground of appeal of revenue is against the action of the Ld. CIT(A) in deleting the addition of industries promotion assistance [IPA] of Rs.1,96,77,000/- received as subsidies by assessee under the West Bengal Incentive Scheme 2000 (in short, 'WBIS 2000') and treating it as a capital

receipt while the AO treated the same as revenue receipt and made the addition.

4. Facts of the assessee's case for AY 2010-11 is given in para 3, which are reproduced hereunder:-

"3. Briefly stated facts as observed by the AO are that the assessee company filed its return of income on 04.10.2010 declaring total income of Nil. Subsequently Revised return was filed by the assessee on 29.09.2011 declaring total income of Rs. 2,49,72,665/- and claimed deduction in the computation of taxable income treating it as capital receipt. Assessment was made u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "Act") on 22.03.2013 at assessed income of Rs. 2,51,90,665/-. Thereafter the assessment was revised by Ld. PCIT-I, Kolkata and consequently he gave direction to the A. O. vide order u/s. 263 of the Act dated 19.03.2015 to pass a fresh assessment order after considering his observation. As per direction of Ld. PCIT -I. Kolkata the A.O passed the order u/s. 263/143(3) on 12.11.2015 assessing the income at Rs. 4,50,78,115/- by making addition of Rs. 1,96,77,00/-the subsidy from the Govt. of W.B. & unpaid liability of Gratuity of Rs. 2. 10,450/-. During the course of re-assessment the AO found that the assessee credited in P&L Account an amount of Rs.2,33,51,560/- received from West Bengal Industrial Development Corporation (in short 'WBDIC') as Industrial Promotion Assistance (in short, 'IPA'). According to AO, in the original return the assessee treated it as revenue receipt but in the revised return the assessee changed tact and claimed deduction of this amount in the computation of taxable income treating it as capital receipt. According AO, the assessee submitted before him that the financial assistance provided by the West Bengal State Govt. was for expansion which was capital receipt in nature in view of the decision taken by Hon'ble High Court of Calcutta in the case of CIT-Vs- Rasoi Limited. However, according to AO, in the case of Rasoi Ltd., subsidy had been received by the assessee under WBIS-Scheme 1994 whereas in the instance case, the subsidy was received by the assessee under the WBIS-2000. So according to AO, the facts of the two cases are different and the decision in the case of CIT-vs- Rasoi Limited was not applicable in the instance case. Further, the AO observed that in the A.Y, 2010-11 the assessee credited the amount of incentive in P/L account as "Other Income" treating it as revenue receipt but claimed deduction in computation of taxable income treating it as capital receipt. Whereas, in the A. Y. 2009-10 the assessee had received subsidy of Rs. 203.70 Lakh from WBIDC, credited it in P/L account but did not claim deduction for subsidy as revenue in nature and credited it in P/L account. Only difference was that in the revised return of A. Y. 2010-11 assessee claimed deduction for it in the computation of taxable income. So according to AO, there was no deviation in treatment of nature of incentive in A. Y. 2010-11, as the both the years incentive was received from WBIDC under the same scheme. According to AO, it was verified from the website of WBIDC that the assessee received incentive from WBIDC under the category of Mega Projects of WBIS 2000 for the F.Y 2007-08, 2008-09, 2009-10 & 2010-11. The AO took note that assessee had credited in P&L account only of Rs. 233.52 Lakh from WBIDC on

22.09.2009 under WBIS 2000, out of which sum of Rs. 39.35 Lakh was given under SCIS (State Capital Investment Scheme) and remaining Rs. 196.77 was given as IPA (Industrial Promotion Assistance). So according to him, only the amount of Rs. 39.35 Lakh can be treated as capital subsidy as it was specifically given for capital investment and remaining Rs. 196.77 Lakh was given for Industrial Promotion Assistance and it need to be treated as revenue receipt and hence added back to the total income of the assessee. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who deleted the addition as made by AO by holding that the Industrial Promotion Assistance received by the assessee is to be treated as a capital receipt. Aggrieved, revenue has preferred this appeal before us.

5. The decision of the tribunal/operative portion of the order dated 29-05-2020 reads as under:

"12. We note that the Govt. of West Bengal has decided to grant the subsidy by way of IPA for setting up of large/medium/small scale eligible unit which is prescribed in the WBIS 2000 and the unit has to be set up in either group B or C areas prescribed in the said scheme (WBIS 2000). We note that the assessee had set up a new unit in the Bankura District of West Bengal area which falls in the group C area of the Scheme WBIS 2000. The competent authority of the State Government has approved the package of incentive for the assessee vide letter dated 24.09.2003 (supra) for setting up of the unit for manufacturing of sponge iron, Rolled Products, Ferro Alloys etc. in the state of West Bengal at Bankura District to set up the unit with an investment of Rs.279 cr. Thus, we note that the subsidy/financial assistance was for promotion of the industry and for setting up of large/medium/small scale eligible unit in the places prescribed at group B and C in the scheme WBIS 2000. Since the assessee fulfills the eligibility conditions prescribed by the Scheme 2000 it was entitled to industrial Promotion Assistance equivalent up to @75% of the sales tax paid in previous year which sales of finished goods subject to a maximum of 100% of the fixed capital investment for a maximum period of 15 years. Accordingly, the assessee in the year under consideration has received an amount of Rs.1,96,77,000/- from the West Bengal under the WBIS 200 scheme. Since the object of the financial assistance as per the subsidy scheme was to be enable the assessee to set up a new unit in the areas as specified group B or C as the WBIS 2000, we are of the opinion that the subsidy was on capital account. The AO erred in relying on the decision of the Hon'ble supreme Court in Sahaney Steel (supra) wherein the facts were different and distinguishable. In that case (Sahaney Steel) the Tribunal had disallowed the claim of the assessee and the Hon'ble Supreme court in Sahaney Steel's case after analysis of the scheme therein held that the subsidy given was on revenue account because it was given by way of assistance in carrying on of trade or business. On the facts of that case, it was held that the subsidy given was to meet recurring expenses and it was not for acquiring the capital asset or bringing into existence any new asset and consequently the contention raised on behalf of the assessee on the facts of that case stood rejected and it was held that the subsidy received by Sahaney Steel

could not be regarded as anything but a revenue receipt and the Apex Court was pleased to confirm the Tribunal's action. However, the case in hand before us is different as discussed above. The object of the subsidy in this case in was for setting up of unit in group B or C areas as spelled out in the WBIS scheme 2000 and since the object of the assistance under the subsidy scheme was to enable the assessee to set up unit, the receipt of subsidy was on capital account. We note that the Hon'ble Supreme Court in the subsequent decision after considering the Sahaney Steel & Press Works Pvt. Ltd. (Supra) in the case of CIT Vs. Pony Sugars & Chemicals Ltd. (supra) has made it clear that for determining the nature of the incentive/ subsidy, the object for which the subsidy/assistance given will be the deciding factor and the form or the method of the payment through which the subsidy is given is irrelevant. Merely because the amount of subsidy was equivalent to 75% of the sales tax paid by the beneficiary does not imply that the same was in the form of refund of sales tax paid. Therefore, since the subsidy was for setting up of large/medium/small scale eligible unit in group B and C areas in the State of West Bengal and the competent authority has issued the eligibility certificate (West Bengal Industrial Development Corporation Ltd.) to the assessee and since the assessee fulfills all the conditions as laid in the WBIS 2000 scheme, the industrial promotion assistance it received was on capital account. 13. In the light of the discussion above and relying on the ratio laid in the decision of the Hon'ble Calcutta High Court in M/s. Rasoi Ltd. (2011) 79 CCH 419, we uphold the order of the ld. CIT(A) since the subsidy/IPA was given to the assessee for setting up of mega project/unit in the district of Bankura, West Bengal (as discussed supra). Therefore, we find no infirmity in the impugned order of the ld. CIT(A). We uphold the same.

6. We note that the AO in the instant case for AY 2012-13 has deliberated the facts as under:-

In the computation of income assessee claimed deduction Rs. 5,45,08,669/- as IPA Incentives . The assessee was asked to explain the reason of claim. The assessee made a submission which is summarised as below:

We have booked a sum of Rs. 5,45,08,669/- on account of the Industrial Promotion Assistance under West Bengal Incentive Scheme, 2000 for establishing industry in the, state of West Bengal which is to be disbursed by the way of remission of 75% of the Sales Tax paid in the previous year. We have claimed the same to be capital receipt.

From the submission of the assessee it can be concluded that it is basically rebate/incentive on the sales tax paid. That means the assessee get benefit on sales tax payment. So it is under no circumstances a capital receipt. The assessee get the benefit on sales tax hence this is revenue receipt. So the amount claimed of Rs. 545,08,669/- is being disallowed. Penalty u/s. 271 (1)(c) is being initiated in this issue for summiting in accurate particulars. Addition:Rs.5,45,08,669/-

7. We note that the Ld. CIT(A) has accepted the claim of the assessee. We note that the issue before us has already been settled by this Tribunal vide order dated 29-05-2020 in assessee's own case. Since there is no change in facts or law and the scheme on which the deduction claimed was in respect of Industrial Promotion Assistance (IPA) under West Bengal Incentives Scheme, 2000, therefore on the same reasoning in assessee's own case for the AY 2010-11, we confirm the impugned order of the Ld. CIT(A) and dismiss the revenue's appeal.

8. Ground no. 2 is against the action of the Ld. CIT(A) in deleting the addition of Rs. 2,62,891/- made u/s. 14A read with rule 8D of the Income-tax Rules, 1962 (in short, the "Rules")

9. At the outset, it was brought to our notice by the Ld. AR that the assessee has not earned any dividend income. Therefore, the Ld.CIT(A) has deleted the impugned addition by referring to various judgments of various Hon'ble High Courts. We note that the Ld.CIT(A) has deleted the addition based on the various decisions of various Hon'ble High Courts, which is discerned from the last page of the impugned order of the Ld. CIT(A). Since the Ld. CIT(A) has given relief to the assessee taking note of the fact that assessee did not earn any exempt income and since the revenue has not been able to challenge this factual aspect, we confirm the impugned order of the Ld. CIT(A) in the light of the decision of the Special Bench of Tribunal [Delhi] in the case of ***Cheminvest Ltd.* v. *ITO* [2009] 121 ITD 318 (Delhi)(SB)**and other decisions by Hon'ble High Courts referred to by the Ld.CIT(A) in the impugned order**.** This ground of revenue's appeal is dismissed.

10. In the result, the appeal of revenue is dismissed.

Order is pronounced in the open court on 19 Aug 2020.

Sd/-	Sd/-
(Arjun Lal Saini)	(Aby. T. Varkey)
Accountant Member	Judicial Member

Dated : 19 Aug2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –The DCIT, Cir-3(1), AaykarBhawan, P-7 Chowringhee Square, 4th Fl., Room No. 19, Kolkata-69.
2 Respondent –M/s. Sova Ispat Limited EN-32, Shyam Towers, Sector-V, Salt Lake City, Kolkata-91.
3. CIT(A)-4, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy, Assistant Registrar