

OD-16

ITAT No.200 of 2014
GA No. 3980 of 2014
GA No. 3981 of 2014

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, KOLKATA-I, KOLKATA
Vs.
M/S. GLOSTER JUTE MILLS LTD.

BEFORE :

The Hon'ble JUSTICE SANJIB BANERJEE
And
The Hon'ble JUSTICE ABHIJIT GANGOPADHYAY

Date : June 18, 2018.

Appearance
Mr. P.K. Bhounick, Adv.

Mr. S. Basu, Adv.

The Court : The marginal delay in preferring the appeal is condoned in view of the good grounds shown.

Two questions are sought to be raised by the Revenue in this appeal. The first is as to whether the money received under a Central Government subsidy by the assessee had to be regarded as a capital receipt or a revenue receipt. The second question is whether the unabsorbed part of the depreciation of a 100% export-oriented unit could be set off against the depreciation or loss at another unit of the same assessee which is not exempted from tax.

It is fairly submitted on behalf of the Revenue that the second question has already been answered by this Court in favour of the assessee.

Accordingly, it is only the first question that needs to be gone into. The Commissioner (Appeals) read the relevant scheme and was of the opinion that the subsidy received had to be regarded as a revenue receipt. Before the Commissioner

(Appeals) several judgments were cited including the judgment of this Court reported at 238 ITR 445 (*Balarampur Chini Mills Ltd.*) and the decisions of the Supreme Court reported at 228 ITR 253 (*Sahney Steel & Press Works Ltd.*) and 306 ITR 392 (*Ponni Sugars & Chemicals Ltd.*).

In *Balarampur Chini Mills Ltd.*, this Court held that it is the purpose of the scheme that has to be assessed before determining whether the subsidy ought to be treated as a revenue receipt or a capital receipt. It also held that if the subsidy was given for the running of the business of the assessee it had to be regarded as a revenue receipt and if it was given to meet any capital cost of any asset, it had to be seen as a capital receipt. In *Sahney Steel & Press Works Ltd.*, the Supreme Court held that if the subsidy was to help the assessee to set up its business or complete a project, the money had to be treated as having been received for capital purposes. In *Ponni Sugars*, the Supreme Court held that the character of the subsidy is determined with respect to the purpose for which it is granted and the point of time when the subsidy is made available to the assessee may not be of any consequence.

The salient features of the scheme involved in this case have been noted in the order of the Commissioner (Appeals). The scheme was intituled as the “Technology Upgradation Fund Scheme”. The Ministry of Textiles aimed at making available funds to the domestic textile industry for technology upgradation of the existing units as well as to set up new units with the latest technology to enhance their viability and competitiveness in the domestic and international markets. The preamble to the scheme recognised that in the post-quota regime, the industry had to become competitive, cost effective and quality oriented.

The avowed purpose of the scheme was to induce the entrepreneur to undertake investment in modernising the plant and machinery and assets and the objectives of the

scheme clearly spelt out such purpose. In the context of the scheme, it could never have been understood to imply that the subsidy was for the purpose of the day-to-day business of the assessee or any entrepreneur qualified to receive it. The subsidy was clearly for the purpose of upgrading the machinery and plant and for acquiring capital assets. In the light of the judgments which were carried to the Commissioner (Appeals), the Commissioner ought to have construed the quantum of subsidy received by the assessee to be a capital receipt.

The judgments relied upon before the Commissioner, particularly, the Supreme Court judgments in *Sahney Steel* and *Ponni Sugars* were referred to by the Appellate Tribunal in correcting the error committed by the Commissioner in treating the subsidy in the hands of the assessee as a revenue receipt. In the light of the conclusive pronouncements on the subject, the order of the Appellate Tribunal does not require to be revisited. On the strength of the terms of the scheme and its purpose, the subsidy received thereunder had only to be regarded as a capital receipt and not a revenue receipt.

ITAT No. 200 of 2014 along with GA No. 3980 of 2014 and GA No. 3981 of 2014 are disposed of.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(ABHIJIT GANGOPADHYAY, J.)

sg.