

ORDER SHEET

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

ITAT 175 of 2014  
GA No.3609 of 2014  
COMMISSIONER OF INCOME TAX, KOL-II, KOLKATA  
Versus  
M/S. KEVENTER AGRO LTD.

ITAT 176 of 2014  
GA No.3610 of 2014  
COMMISSIONER OF INCOME TAX, KOL-II, KOLKATA  
Versus  
M/S. KEVENTER AGRO LTD.

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE ABHIJIT GANGOPADHYAY

Date : 19th June, 2018.

Mr. Prithu Dudheria, Adv. for the appellant.

Mr. Sourav Bagaria, Mr. G. S. Gupta, Advocates for the respondent.

The Court : These two matters cover two assessment years 2000-2001 and 2003-2004. The Commissioner (Appeals) held in favour of the assessee in either case and the orders of the Commissioner (Appeals) have been upheld by the Appellate Tribunal in the orders impugned. The order of the Commissioner (Appeals) in the latter case merely followed the order passed by the same Commissioner (Appeals) earlier.

The two questions involved herein pertain to the deduction on account of interest for obtaining a loan under Section 36(1)(iii) of the Income Tax Act, 1961 and the treatment of a subsidy pursuant to a scheme promulgated by the State Government.

As to the second legal issue, pertaining to the treatment of the subsidy in the hands of the assessee pursuant to the relevant scheme, the legal issue that has arisen is whether the same has to be regarded as a revenue receipt or a capital receipt. The scheme of the State Government is the same as in the case of ITA 37 of 2018 (*Principal Commissioner of Income Tax Vs. Shyam Steel Industries Limited*) which was decided on May 7, 2018. As would be evident from the judgment and order of May 7, 2018, this Court relied on the Supreme Court judgments reported at 228 ITR 238 (*Sahney Steel & Press Works V. CIT*) and 306 ITR 392 (*CIT V. Ponni Sugars & Chemicals Ltd.*) to hold that it is the purpose of the grant under a scheme which is of paramount importance while assessing whether the money received thereunder ought to be treated as a revenue receipt or a capital receipt. In that case, this Court concluded that since the scheme provided for an incentive for enlarging the manufacturing facility or acquiring more equipment, however the money may have been paid or adjusted in terms of the scheme, the same had to be regarded as a capital receipt. The distinction that was made was that a revenue receipt would be when money is received for the day to day running of an assessee but a capital receipt would be one which goes towards funding the capital assets of a company like the enhancement of its manufacturing facility or the acquisition of more advanced equipment and the like.

In view of the judgment in *Shyam Steel Industries Limited*, the second issue is answered in favour of the assessee. The view expressed in such regard by the Appellate Tribunal does not call for any interference.

As far as the first issue is concerned, pertaining to the deduction of the interest paid on obtaining a loan, both the Commissioner (Appeals) and the Appellate Tribunal noticed an agreement between the assessee, the National

Dairy Development Board and the West Bengal Cooperative Mill Producers Federation Limited to set up a joint venture company for the production of milk. The assessee is engaged in the business of the manufacture and sale of fruit juice and like products. The setting-up of a joint venture company with a Central Government agency and a State Government entity cannot be said to be beyond the purview of the business operations of the assessee. In such circumstances, the amount of interest paid in respect of the funds borrowed by the assessee had to be regarded as a payment made for the purpose of the business of the assessee and a permissible deduction under Section 36(1)(iii) of the Act.

In any event, the Commissioner (Appeals) noticed in the earlier of his two orders that in respect of previous assessment years the relevant Assessing Officers had not found fault with the interest payment being claimed as deduction.

Since concurrent findings on the question have been rendered by the Commissioner (Appeals) and the Appellate Tribunal and the nature of the investment made by the assessee with the borrowed funds appears to be in the line of its business, the legal issue does not call for any reconsideration.

ITAT 175 of 2014 along with G.A.3609 of 2014 and ITA 176 of 2014 along with G.A.3610 of 2014 are dismissed.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(ABHIJIT GANGOPADHYAY, J.)