

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11934 OF 2016
[Arising out of Special Leave Petition
(Civil) No.6946/2014]

SIEMENS PUBLIC COMMUNICATION
NETWORKS PVT.LTD. ...APPELLANT

VERSUS

CIT BANGALORE & ANR. ...RESPONDENTS

WITH
CIVIL APPEAL NO.11936 OF 2016
[Arising out of Special Leave Petition
(Civil) No.8353/2014]

CIVIL APPEAL NO.11937 OF 2016
[Arising out of Special Leave Petition
(Civil) No.8594/2014]

ORDER

1. Leave granted in all the Special
Leave Petitions.

2. The Assessment Years in question
are 1999-2000, 2000-2001 and 2001-2002. The
point involved in the present appeals is
short and precise. The subvention received
by the Assessee - Company from its parent

Company in Germany in a situation where the Assessee - Company was making losses has been treated to be a revenue receipt by the Assessing Officer. Though the First Appellate Authority [Commissioner of Income Tax (Appeals)] and the learned Income Tax Appellate Tribunal ("Tribunal" for short) has reversed the said finding, the High Court, by the orders under challenge, has restored the view taken by the Assessing Officer. Aggrieved the Assessee has filed the present appeals.

3. The question of law that was presented before the High Court, namely, whether subvention was capital or revenue receipt, was sought to be answered by the High Court by making a reference to two decisions of this Court in Sahney Steel & Press Works Ltd., Hyderabad versus Commissioner of Income Tax, A.P.-I, Hyderabad¹ and Commissioner of Income Tax, Madras versus Ponni Sugars and Chemicals

1 [(1997) 7 SCC 764]

Limited². The view expressed by this Court that unless the grant-in-aid received by an Assessee is utilized for acquisition of an asset, the same must be understood to be in the nature of a revenue receipt was held by the High Court to be a principle of law applicable to all situations. The aforesaid view tends to overlook the fact that in both Ponni Sugars (supra) and Sahney Steel (supra) the subsidies received were in the nature of grant-in-aid from public funds and not by way of voluntary contribution by the parent Company as in the present cases. The above apart, the voluntary payments made by the parent Company to its loss making Indian company can also be understood to be payments made in order to protect the capital investment of the Assessee Company. If that is so, we will have no hesitation to hold that the payments made to the Assessee Company by the parent Company for Assessment Years in

2 [(2008) 9 SCC 337]

question cannot be held to be revenue receipts. We also find such a view in a recent pronouncement in Commissioner of Income Tax versus Handicrafts and Handlooms Export Corporation of India Ltd.³ (Delhi High Court) with which we are in respectful agreement.

4. For the aforesaid reasons, we allow the present appeals; set aside the order of the High Court and answer the liability of the Assessee for the Assessment Years in question in the above manner.

....., J.
(RANJAN GOGOI)

....., J.
(N.V. RAMANA)

NEW DELHI
DECEMBER 07, 2016

3 [(2014) 49 Taxmann.com 488 (Delhi)]