

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : D : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2163/Del/2015  
Assessment Year : 2008-09

LG Electronics India Pvt. Ltd., Vs. ACIT,  
Plot No.51, Udyog Vihar, Circle-2,  
Surajpur Kasma Road, A-2D, Sector-24,  
Greater Noida, Noida.  
Gautam Budh Nagar,  
Uttar Pradesh.  
PAN: AAACL1745Q

Assessee By : Shri Ajay Vohra, Sr. Advocate,  
and Shri Gaurav Jain &  
Ms Bhavita Kumar, Advocates  
Deptt. By : Shri Naveen Chandra, CIT, DR

Date of Hearing : 18.04.2017  
Date of Pronouncement : 19.04.2017

ORDER

PER R.S. SYAL, VP:

This appeal by the assessee is directed against the order dated 30.03.2015 passed by the CIT u/s 263 of the Income-tax

Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2008-09.

2. Briefly stated, the facts of the case are that a return declaring total income of Rs.337.00 crore and odd was filed by the assessee on 25.9.2008. Assessment in this case was completed u/s 143(3) read with section 144C of the Act on 27.11.2012 at a total income of Rs.654.97 crore. During the year under consideration, the assessee received, *inter alia*, subsidy amounting to Rs.49,38,00,503/- from the Government of Maharashtra which was treated as a capital receipt not chargeable to tax. The Assessing Officer, while framing the assessment, accepted the treatment given to it by the assessee. However, the Id. CIT, invoking jurisdiction u/s 263 of the Act, came to hold that such subsidy received from the Government of Maharashtra was a revenue receipt and hence chargeable to tax. Characterizing the assessment order as erroneous and prejudicial to the interests of the Revenue, he revised the assessment order and directed the Assessing Officer to include the amount of such subsidy in the total income. The assessee is aggrieved against this order.

3. We have heard the rival submissions and perused the relevant material on record. The short question before us is as to whether the assessment order treating the subsidy from the Government of Maharashtra as capital receipt is erroneous and prejudicial to the interest of the Revenue in terms of section 263 of the Act. We straightaway proceed to decide the merits of the taxability or otherwise of such subsidy received from the Government of Maharashtra.

4. The Maharashtra Government announced Industrial Policy of Maharashtra, 2001 with the objective of promotion of industry and balanced regional growth, diversion of industry to less developed areas of the State and increase in employment. The Government formulated a scheme for providing refund of VAT to new units/units undertaking expansion within the State of Maharashtra. The relevant text of Industrial Policy of Maharashtra, 2001 is available on page 138 of the paper book. The objective of the Scheme as given in its para 2.0, reads as under:-

“In the phase of second generation economic reforms, the objective of Maharashtra Industrial Policy 2001 is to further *accelerate the flow of*

*investment in industry and infrastructure, promoting IT, high-tech, knowledge based and biotech industries, augmenting exports from the industrial units in the State and creating large scale employment opportunities duly ensuring environmental planning.”*

5. It is clear from the objective of the Scheme that the same is aimed at accelerating the flow of investment in industry and also creating a large-scale employment opportunities. The Scheme was notified by the Government Resolution dated 31.03.2001 as ‘Maharashtra PSI Scheme 2001.’ A copy of such Notification is available from page 153 onwards of the paper book. The said Package Scheme of Incentives, 2001 was amended vide Government Resolution dated 02.06.2005, whose copy is available from page 187 onwards of the paper book. The introduction part of this Resolution dated 2<sup>nd</sup> June, 2005 elaborates that Incentive Scheme 2001 is in existence and special incentives to the medium and large-scale industrial units were to be given with the objective of increasing the flow of industrial investment in the State and creating substantial employment opportunities, to be considered as Mega Projects. Certain categories have been given under the Mega Projects. The assessee falls in ‘B’ category. Pursuant to such Scheme, the

assessee entered into a Memorandum of Understanding (MoU) with the Government of Maharashtra, through Secretary (Industries) to the Government. A copy of such Agreement is available from page 194 of the paper book. Under this MoU, the assessee undertook to make additional investment of around Rs.535 crore over and above the investment made as on 11<sup>th</sup> August, 2005, towards further expansion of the existing project at Ranjangaon, Pune and also to generate additional employment of 2000 persons by 2010. The State Government, in turn, offered the following incentives to the assessee:-

“2.2.1. Exemption from payment of Electricity duty for 15 years.

2.2.2. Industrial Promotion Subsidy to the extent of 75% of Gross Fixed Capital Investment (As defined in PS 1993 & 2001) made after 11<sup>th</sup> August 2005 and not less than Rs.250 Crs. Within a period of 3 years from the date of completion of final effective steps as defined in PSI 2001 for the expansion project or to the extent of taxes paid to the State Government on the increased turnover as a result of proposed additional FCI within a period of 7 years, whichever is lower. While giving this subsidy, the Government would deduct the amount of benefits availed at 2.2.1 above over a period of 7 years. The modalities of paying the subsidy amount will be determined shortly.”

6. On going through the relevant clauses of the Incentive Scheme and MoU, it emerges that the assessee agreed to make additional investment

in the Maharashtra State and also undertook to give additional employment and, as a *quid pro quo*, the Government agreed to allow exemption from payment of electricity duty and subsidy to the extent of 75% of the fixed capital of investment, in the form of relief from taxes on the increased turnover as a result of the proposed additional investment. It, thus, becomes abundantly vivid that the objective of the Scheme is to accelerate the flow of investment in industry and also to create large-scale employment opportunities and the resultant subsidy is in the shape of exemption from payment of taxes on the increased turnover. The question as to whether a subsidy is a capital or revenue receipt largely depends on the 'purpose' of the grant and not the mode of its discharge. The relevant consideration in this regard is, therefore, the 'purpose test.' If the purpose or object of a Scheme is the setting up new industry or its expansion, then, the subsidy so received assumes the character of a capital receipt irrespective of the form in which it is disbursed. The Hon'ble Supreme Court in the case of *CIT vs. Ponni Sugars and Chemicals Ltd. (2008) 306 ITR 392 (SC)*, has laid down to this extent. On the other hand, an operational subsidy given after the

commencement of production, for enabling the assessee to run the business more profitably and not for setting up of the industry is a revenue receipt as has been laid down by the Hon'ble Supreme Court in the case of *Sahney Steel & Press Works Ltd., etc. vs. CIT (1997) 228 ITR 253 (SC)*. On a conjoint reading of the two judgments coming from the Hon'ble Summit Court on this issue, it is manifest that any subsidy received for setting up of or expansion of industry falls in the realm of 'Capital receipt' which is not chargeable to tax.

7. Adverting to the facts of the instant case, we find that the assessee received the extant subsidy for accelerating flow of investment in industry in the State of Maharashtra i.e., for expansion of the industry. The subsidy resulting from such industrial expansion is *ex consequenti* governed by the judgment of the Hon'ble Supreme Court in the case of *Ponni Sugars and Chemicals Ltd.* (supra) and, hence, a capital receipt.

8. It is observed that the Package Scheme of Incentive 2001, under which the assessee received the above subsidy, is a successor of the 1993 Scheme of Maharashtra Government and 1979 Scheme of

Maharashtra Government. All these schemes were/are aimed at increasing the pace of industrialization and the incentive is based on the amount of investment in fixed assets. While considering 1993 Scheme of Maharashtra Government, the Mumbai Bench of the Tribunal in *Everest Industries Ltd. vs. ACIT (ITA No.814/Mum/2007)*, vide its order dated 04.12.2009, has held such subsidy to be capital in nature. A copy of such order has been placed from page 570 onwards of the paper book. Similar view has been taken by the Pune Bench of the Tribunal in the case of *Rohit Exhaust Pvt. Ltd. vs. ACIT in ITA No.1880/Pn/2013*. A copy of such order dated 31.03.2015 is also available from page 608 of the paper book. The Delhi Bench of the Tribunal in *Indo Rama Synthetics (I) Ltd. vs. ACIT (ITA No.2002/Del/2008)* has also taken a similar view vide its order dated 22.06.2012, whose copy is available at page 270 onwards of the paper book. The ld. DR has not brought to our notice any decision directly supporting the view point of the Department.

9. It is an admitted position that the assessee treated the amount of subsidy as a capital receipt, but, did not reduce it from the value of fixed assets and eventually claimed depreciation on the higher value of assets without reduction of such subsidy. To deal with such a situation, the Finance Act, 2015, w.e.f. 1-4-2016, has enlarged the definition of income given u/s 2(24) by inserting sub-clause (xviii), which reads as under:-

‘(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43;’

10. A bare reading of the above provision makes it explicit that now subsidy given by the Central Government or a State Government or any authority etc. for any purpose, except where it is taken into account for determination of the actual cost of the asset under Explanation 10 section 43(1), has become chargeable to tax.

Even if a subsidy is given to attract industrial investment or expansion, which is otherwise a capital receipt under the pre-amendment era, shall be treated as income chargeable to tax, except where it has been taken into account for determining the actual cost of assets in terms of Explanation 10 to section 43(1). This amendment is patently prospective. As the assessment year under consideration is 2008-09, section 2(24) (xviii) shall have no operation. In view of the foregoing discussion, we are satisfied that the subsidy received by the assessee from the Government of Maharashtra is a capital receipt and accordingly not chargeable to tax.

11. At this stage, it is relevant to mention that we are dealing with revisionary proceedings u/s 263 of the Act. It is a settled legal position that if two views are possible on a particular point and the Assessing Officer has taken one of such possible views, it is not open to the CIT to treat the assessment order erroneous and prejudicial to the interest of the Revenue and impose the other possible view as against the one

canvassed by the Assessing Officer. The discussion made in the preceding paras amply shows that the view taken by the AO in treating subsidy received from the Maharashtra Government as a capital receipt, in any case, being a possible view, cannot be interfered with in the proceedings u/s 263 of the Act. We, therefore, set aside the impugned order.

12. In the result, the appeal is allowed.

Order Pronounced in the open Court on 19.04.2017.

Sd/-

[SUCHITRA KAMBLE]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
VICE PRESIDENT

Dated, 19<sup>th</sup> April, 2017.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR/NEW DELHI.