

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL PUNE BENCH "B", PUNE
(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1042/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

Inox Air Products Private Limited,
Solitaire, Office No.4, First Floor,
Near Aga-Khan Palace,
Nagar Road, Pune.

..... अपीलार्थी /
Appellant

PAN : AAAC15569D.

बनाम v/s

The Addl. Commissioner of Income Tax,
Circle – 11, Pune.

..... प्रत्यर्थी /
Respondent

आयकर अपील सं. / ITA No.1118/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

The Addl. Commissioner of Income Tax,
Circle – 11, Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

Inox Air Products Private Limited,
Solitaire, Office No.4, First Floor,
Near Aga-Khan Palace,
Nagar Road, Pune.

..... प्रत्यर्थी /
Respondent

PAN : AAAC15569D.

Assessee by : Shri C.H. Naniwadekar.
Revenue by : Shri Deepak Garg.

सुनवाई की तारीख / Date of Hearing : 25.06.2021

घोषणा की तारीख / Date of Pronouncement : 06.07.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the cross appeals filed by the assessee as well as the Revenue directed against the order of the learned Commissioner of Income

Tax (Appeals), Pune – 1 dated 27.02.2017 for the assessment year 2014-15.

2. The brief facts of the case are as under :

The assessee namely, Inox Air Products Pvt. Ltd., is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing and selling of Industrial / Medical gases. The return of income for the A.Y. 2014-15 was filed on 27.11.2014 declaring a total income of Rs.1,32,98,33,950/-. Against the said return of income, the assessment was completed by the Asst. Commissioner of Income Tax, Circle – 11, Pune (hereinafter referred as “the Assessing Officer) at a total income of Rs.141,87,22,120/-. The disparity between the returned income and the assessed income is on account of the following additions :

- (i) Addition of subsidy received considering of new industrial sales from State Governments of Rs.8,81,44,464/- treating as a revenue receipt as against the assessee’s claim of capital receipt.
- (ii) Addition of Rs.7,43,508/- on account of discrepancy between information in Form 26AS data on ITS and the amount credited to Profit and Loss account.

3. The brief factual background is as under :

During the previous year relevant to the assessment year under consideration, the assessee company received capital subsidy of Rs.8,81,44,464/- on the setting up of the following units :

| Unit | Subsidy pertaining to (Financial Year) | Nature | Amount Rs. |
|---------|--|--|--------------------|
| Bokaro | 2013-14 | Capital Investment Subsidy | 7,78,36,000 |
| | | Sub Total A | 7,78,36,000 |
| Jejuri | 2012-13 | Industrial Promotion Subsidy (IPS)- Reversal based on final claim submission | (78,386) |
| | | Sub Total B | (78,386) |
| Bhiwadi | 2013-14 | Investment Subsidy | 97,24,050 |
| Bhiwadi | 2013-14 | Employment Generation Subsidy | 6,63,000 |
| | | Sub Total C | 1,03,87,050 |
| | | Grand Total (A+B+C) | 8,81,44,664 |

During the previous year relevant to the assessment year under consideration, the appellant company had received a subsidy of Rs.7,78,36,000/- on setting up the Air Separation Plant in Bokaro. The plant was eligible for subsidy under Investment, Promotion, Incentive under Jarkhand Industrial Policy, 2001. In terms of the said policy announced by the Government of Jarkhand, the assessee is entitled for Capital Investment Subsidy of 5% of its fixed capital subject to maximum of Rs. 4 crores and 75% of the amount received by the Government towards commercial taxes i.e., (VAT and CST) for a period of 7 years from date of commercial production i.e., 13.12.2008. The capital subsidy was accounted on accrual basis by crediting capital subsidy under Reserves and Surplus.

Similarly, in respect of the Jejuri Unit, the assessee company had made investments towards expansion of the existing plant at Jejuri. The cost of investment on the expansion is eligible for subsidy under Industrial Promotion Subsidy under Package Scheme of Incentives 2007 issued by the Government of Maharashtra for a period of 3 ½ years. The subsidy was accounted for on accrual basis and the same is credited to Capital Reserve account.

In respect of Bhiwadi Unit also, the assessee company has set up a unit in Kaharani Industrial Area, Bhiwadi, Dist - Alwar, Rajasthan and the plant was set up in the accounting year 2012-13 and the commercial production was commenced on 02.12.2012 and the said plant was eligible for Investment Subsidy and Employment Generation Subsidy for a period of 7 years in terms of the policy announced by the Government of Rajasthan i.e., Industrial and Investment Policy, 2010. The subsidy due was accounted for on accrual basis and credited to Capital Reserve account. The Assessing Officer was of the opinion that the subsidies were received after the commencement of commercial production, therefore, according to him, these subsidies were granted only to assist the revenue operations of the business of the assessee company and therefore, the nature of the subsidy is only revenue in nature placing reliance on the decision of Hon'ble Supreme Court in the case of Sahney Steel & Press Works Limited Vs. CIT reported in 94 Taxman 368 (SC), accordingly, taxed the subsidy amount as revenue income.

4. We are not concerned with regard to the addition of Rs.7,43,508/- on account of discrepancy between information in Form 26AS data on ITS and the amount credited to Profit and Loss account.

5. On appeal before the Id.CIT(A), considering the scheme of the subsidy in all the three States, Id.CIT(A) has concluded that the subsidy was given for capital investment and the same is also linked to the capital investment. He further concluded that the fact that part of the subsidy was given by way of refund of sales tax paid by the appellant will not change the character of the subsidy and therefore, held that it is a capital receipt. However, the Id.CIT(A) considering the provisions of Explanation 10 of Sec.43(1) of the Income Tax Act, directed the Assessing Officer to reduce the amount of the subsidy received from the respective block of assets.

6. Being aggrieved by the decision of Id.CIT(A) holding it to be a capital receipt, the Revenue is in appeal before us in appeal No.1118/2017. The assessee being aggrieved by the directions of Id.CIT(A) to reduce the subsidy from the cost of the respective block of assets is in appeal before us vide appeal No. 1042 of 2017.

7. First, we shall take up the appeal filed by the Revenue in ITA No.1118/PUN/2017.

8. The learned counsel for the assessee submitted that the issue is squarely covered by the decision of this Co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2013-14 in ITA Nos. 1041/PUN/2017 dated 10.11.2020 wherein the Co-ordinate Bench of the Tribunal considering the

Scheme of the subsidy concluded that the purpose of subsidy is only to accelerate the industrial development in the concerned States and by applying 'purpose test' in determining the nature of the subsidy, held that the same cannot be construed as a revenue receipt in nature.

Similarly, as regards to the reduction of the subsidy from the block of assets in terms of Explanation 10 to Sec.43(1) of the Act, the Co-ordinate Bench of the Tribunal placing reliance on the decision of jurisdictional High Court in the case of Pr. CIT Vs. M/s. Welspun Steel Ltd. (2019) 264 Taxmann 252 (Bom) concluded that since the subsidy was not granted to meet the cost of the asset, therefore, the same cannot be deducted from the respective block of the assets. As regards the subsidy issued by the State of Maharashtra, reliance was placed on the decision of Hon'ble Madras High Court in the case of CIT Vs. Kanyakumari District Spinning Mills reported in 684 ITR in support of the proposition that though the subsidy was calculated in terms of the cost of the employees it does not mean that the subsidy is granted with intention to supplement the revenues of the assessee company.

9. The ld.CIT D.R. placed reliance on the orders of lower authorities and pleaded that since the investment was granted in terms of employment generation and in terms of refund of sales tax paid, the same should be treated as revenue in character placing reliance on the decision of Hon'ble Supreme Court in the decision of Sahney Steel & Press Works Ltd. (supra).

10. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the subsidy received by the

assessee company is whether in the nature of capital or revenue. There is no need to extract the schemes of the subsidy policies of the respective States as the Assessing Officer had set out clearly the schemes of the subsidies of the three States. On perusal of the respective schemes of the subsidy, it is clear that the subsidy is only granted in order to accelerate the industrial development and promote the employment opportunities. It is settled position of law that to determine the true nature of the subsidy, a “purpose test” has to be applied as held by the Hon'ble Supreme Court in the case of CIT Vs. Ponni Sugars and Chemicals Ltd reported in 306 ITR 392 (SC). The Co-ordinate Bench of the Tribunal has rightly applied the “purpose test” and had come to conclusion that the nature of subsidy is only in capital nature and we do not see any reason to differ with the reasoning of the Co-ordinate Bench of the Tribunal in assessee's own case in ITA No.1042/PUN/2017 and accordingly, we do not find merit in the grounds of appeal filed by the Revenue.

11. In the result, the appeal filed by the Revenue is dismissed.

12. Now we take up the appeal filed by the assessee in ITA No.1042/PUN/2017.

13. In this appeal, the assessee company challenged the directions of Id.CIT(A) to reduce the amount of the subsidy received from the respective block of assessment years in terms of the Explanation 10 to Sec.43(1) of the I.T. Act. On perusal of the respective schemes of the subsidy, it is clear that the subsidy is not granted to meet the cost of any fixed asset and therefore the Explanation 10 to Sec.43(1) have no application to the facts of the

present case. The Co-ordinate Bench of the Tribunal in appeal in earlier year in assessee's own case in ITA No.1041/PUN/2017 had rightly applied the decision of the Hon'ble jurisdictional Bombay High Court in the case of CIT Vs. M/s. Welspun Steel Ltd., (supra) and we do not see any reason to differ with the reasoning of the decision of the Co-ordinate Bench. Accordingly, we reverse the directions of the Id.CIT(A) directing the Assessing Officer to reduce the amount of the subsidy from the cost of the respective block of assets.

14. In the result, the appeal filed by the assessee is allowed.

15. To sum up, the appeal filed by the assessee is allowed and that of the Revenue is dismissed.

Order pronounced on 6th day of July, 2021.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 6th July, 2021.
Yamini

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(Appeals), Pune – 1.
4. Prl. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” /
DR, ITAT, “B” Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.