

consider and decide the same as per law after giving opportunity of being heard to the assessee. This tribunal order in the first round of proceedings was not challenged by the revenue before the Hon'ble High Court for the Asst Years 1996-97 and 1997-98. For the Asst Year 1998-99, the revenue filed an appeal to the Hon'ble High Court against various other issues but did not raise the issue of admission of additional ground on the aspect of taxability of subsidy. For the Asst Years 1999-00 and 2000-01, the revenue challenged the tribunal order on the admission of additional ground on the aspect of taxability of subsidy and the same was dismissed by the Hon'ble High Court. The Revenue did not further challenge this before the Hon'ble Supreme Court. These facts are evident from Page 1168 of the Paper Book 5 filed by the assessee. The Id. AR before us met all the arguments of the Id. Special Counsel for the Revenue. The Id. AR even filed para wise rebuttal for each of the arguments of the Id. Special Counsel for the Revenue , which are reproduced herein for the sake of convenience:-

Page No / Para No of Submission filed by Department Counsel vide letter dated 01.09.2020	Gist of Department Submission	Rejoinder by Assessee
1 to 3/Para 1	Brief Background stating that in the ROI of respective Assessment Years, no claim for exemption of sales tax incentive/subsidy as capital receipt was claimed. Only when for other issues when matter reached the Tribunal, in	It is not disputed that in original ROI, the Assessee had not claimed exemption of any sales tax/purchase tax/entry tax incentive/subsidy. However, Assessee raised claim before the Tribunal first time and which was admitted and restored to file of AO to consider and decide the same as per law after giving opportunity of being heard to the Assessee.  The Department did not challenge this action of Tribunal for AY 1996-97 & 1997-98 and AY 1998-99

	<p>view of decision of Hon'ble Special Bench Mumbai Tribunal in the case of DCIT v. Reliance Industries Ltd. (88 ITD 273), the Assessee sought claimed relief first time by filing an additional ground of appeal and has reproduced the finding of ITAT as under:</p> <p><i>“This ground has also been raised for the first time before us by the assessee. Therefore, it requires proper examination and verification of the nature of the benefit and the scheme of the Government under which the benefit has been availed by the assessee. Accordingly, we remit this issue to the record of the AO to consider and decide the same as per law and after giving reasonable opportunity of being heard to the assessee”</i></p>	<p>and where it did for AY 99-00 &amp; 00-01, the HC dismissed the same. Against the same to best of our knowledge, no SLP has been filed. (Refer Page 1168 of Paper Book 5).</p>
3 to 10/Para 2	<p>Chart on factual data like data of original 143(3) order, ITAT order, submission of Assessee in set aside proceedings, date of 143(3) r.w.s. 254 order, reason of AO in rejecting claim, quantum of claim in second round and quantum of exemption mentioned in additional ground before ITAT and</p>	<p>At Para 4 of AO's order u/s.143(3) r.w.s. 254 (AY 1996-97), the AO notes that during the assessment proceedings, relevant details have been called for. Assessee submitted the details and explained the same. It may also be noted that during the course of proceedings u/s 143(3) r.w.s. 254, the AO had called for documentary evidences to substantiate the claim of sales tax subsidies/incentives (PB 3, Pg. No. 786) to which the Assessee had duly complied with (See for eg:- PB 1, Pg 31-33 for AY 96-97).</p>

	<p>comments of Department</p> <p>Basis of AO denying exemption in 143(3) r.w.s. 254: Hon'ble Bombay High Court decision upholding ITAT order in Reliance Industries Ltd. has been set aside by Supreme Court to High Court. In original return of income, assessee treated incentive as of revenue nature</p> <p>Further comments by DR:</p> <ul style="list-style-type: none"> <li>• ITAT's order / directive has not been complied with.</li> <li>• Facts have not been discussed in the order. False averments made by the assessee. Variation between figures of subsidy given to ITAT and to AO not explained.</li> <li>• If the figure is based on investment made in fixed assets, there should be no difference. The basis of computation of subsidy has not been given.</li> <li>• Relies on decision of Supreme Court</li> </ul>	<p><b>The AO has discussed this issue at Para 7 and observed as under:</b></p> <p>Para 7.1: Records Assessee's submissions that scheme were framed for necessary infrastructure in backward/notified area and hence incentive is capital in nature. Reliance is placed on the decision of Hon'ble Special Bench Mumbai Tribunal in the case of DCIT v. Reliance Industries Ltd. (88 ITD 273) (PB 1, Pg No. 217-232).</p> <p>Holds that decision of Hon'ble Bombay High Court against Special Bench decision has been set aside by Hon'ble Supreme Court in the case of CIT vs Reliance Industries Limited (Civil Appeal No 7769 of 2011) (PB 1, Pg. No. 243-244) back to Hon'ble Bombay High Court for fresh adjudication and hence it is clear that issue has not been settled by Apex Court till date.</p> <p>Para 7.2: Holds sales tax incentive is nothing but revenue received. Alternatively, since incentive received is on basis of investments made in Fixed Assets, to be reduced from WDV of assets; Thus, this clearly shows that he has examined the Schemes/Notifications/other documents and only then concluded that incentive is on revenue account.</p> <p>Para 7.3: Holds that Assessee's reliance on AY 1995-96, OGE to ITAT wherein such incentive is held to be capital receipt as also CIT(A) order for AY 2006-07 to AY 2008-09 cannot be relied as principle of res judicata does not apply to income tax proceedings.</p> <p>Para 7.4: Holds that other decisions relied by Assessee cannot apply. Also holds that since in Return of Income no claim was made, relying on Hon'ble Supreme Court in case of Goetz (India) Ltd. vs. CIT (284 ITR 323), claim cannot be allowed.</p> <p>Submissions:</p> <ol style="list-style-type: none"> <li>1. All details called for were submitted and explained by the Assessee;</li> <li>2. For AY 1996-97, please see Letter dated September 27, 2012 at Page 26, 28 of Paper Book 1;</li> <li>3. For AY 1996-97, please see Letter dated August 28, 2012 at Page 30 of Paper Book 1;</li> </ol>
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	<p>in the case of Sahney Steel and Press Works Ltd. v. CIT (228 ITR 253).</p>	<p>4. For AY 1996-97, please see letter dated September 27, 2013 at Page 31 of Paper Book 1;</p> <p>5. Please see Annexure A &amp; B referred to in letters dated August 28, 2012 &amp; September 27, 2013 at Page No 33 to 36 Paper Book 1. Similar details were submitted for subsequent assessment years also (please refer Page No. 37 to 58 of Paper Book 1). Thus, details of Scheme, exemptions claimed, yearwise and scheme wise documents all submitted to AO;</p> <p>6. Please see legal submission filed before AO at Page 761 to 785 of PB 3.</p> <p>7. Thus, clearly entire directive of ITAT of examining facts including scheme, purpose and sales tax order/notifications all have been submitted. Unlike the amount referred to in additional ground before ITAT, the AO refers to exact amount claimed by the Assessee in set aside proceedings.</p> <p>8. Entire written submissions before CIT(A) in second round is from Page 59 to 146 of Paper Book 1;</p> <p>9. It is a settled law by Hon'ble Supreme Court and Hon'ble Bombay High Court that once entire details have been furnished before AO, how the AO writes the order is not in control of the Assessee and merely because there is no discussion in order, it cannot be inferred that AO has not passed a speaking order. See following decisions:</p> <table border="1" data-bbox="759 1592 1452 1939"> <tr> <td>Marico Ltd. v. ACIT (111 taxmann.com 253) (Bom HC)</td> </tr> <tr> <td>ACIT v. Marico Ltd. (117 taxmann.com 244) (SLP Dis)</td> </tr> <tr> <td>Idea Cellular Ltd. v. DCIT (301 ITR 407) (Bom HC) (</td> </tr> <tr> <td>GKN Sinter Metals Ltd. v. ACIT (371 ITR 225) (Bom 1393)</td> </tr> <tr> <td>Aroni Commercials Ltd. v. ACIT (367 ITR 405) (Bom</td> </tr> <tr> <td>CIT v. Prima Paper And Engineering Industry (364 IT</td> </tr> </table> <p>10. The Appellant had relied on decisions like</p>	Marico Ltd. v. ACIT (111 taxmann.com 253) (Bom HC)	ACIT v. Marico Ltd. (117 taxmann.com 244) (SLP Dis)	Idea Cellular Ltd. v. DCIT (301 ITR 407) (Bom HC) (	GKN Sinter Metals Ltd. v. ACIT (371 ITR 225) (Bom 1393)	Aroni Commercials Ltd. v. ACIT (367 ITR 405) (Bom	CIT v. Prima Paper And Engineering Industry (364 IT
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*ITA No.2155/Mum/2016 and other appeals  
M/s. Grasim Industries Ltd.,*

		<p>Special Bench in Reliance Industries (supra), Bombay High Court decision in case of Reliance Industries (which now has been set aside back to Bombay High Court by Apex Court), decision of Hon'ble Supreme Court in the case of CIT v. Ponni Sugars &amp; Chemicals Ltd. (306 ITR 392 (SC) (PB1, Pg. no. 233-238)</p> <p>11. The AO only states that decision of Bombay High Court is set aside by SC and thus issue not settled by Supreme Court. Thus, he does not dispute that decision of Special Bench is still a good law.</p> <p>12. Once ITAT has restored the issue to AO, question of Goetz (Supra) does not arise. In any event, even as per Goetz (supra), appellate authorities can always admit a new claim, which ITAT admitting and hence in present proceedings the AO cannot have any grievance on the same. In any event as stated in rebuttal above, those ITAT orders have become final.</p> <p>13. The Assessee submits that before the ITAT in Additional Ground an estimated amount was claimed as capital receipt. Nonetheless, before AO, entire details which are schemes, sales tax notifications, sales tax returns and assessment orders were filed and based thereon final amount was claimed as capital receipt. Further, the Assessee has summarized exact figures for each year, scheme wise at Page 1167 (PB 4). Further, the Assessee has also attached the relevant sales tax assessment order/sales tax return and matched each figures, along with eligibility certificates in PB 2. A specimen detailed chart for AY 1996-97 was also filed at the time of physical hearing. Thus, all figures are explained and entire basis of computation of subsidy year wise along with supporting document is given.</p> <p>14. The DR has made a baseless allegation that false averments have been made by the Assessee without pointing on what those averments are.</p>
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*ITA No.2155/Mum/2016 and other appeals  
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		<p>15. The DR has highlighted that incentives is based on investment made by the Assessee in fixed asset. It is submitted that as demonstrated for Maharashtra Scheme, the total incentive is capped at % of total capital investment. See Pages 382, 399, Item No (11) at Page 400 of PB 2. Thus, assuming that the sales tax figures would undergo change, then too, the monitoring or implementing agency would ensure that incentive cannot go beyond the ceiling. Thus, at best it is timing difference. However, for tax purposes it would not make a difference as the claim is of exemption of such incentive/subsidy on capital account.</p> <p>16. In so far as decision of Supreme Court in Sahney Steel (supra) is concerned, it is submitted that right from subsequent decision of Supreme Court in Ponni Sugars (supra), latest decisions of Hon'ble J&amp;K HC in the case of Shree Balaji Alloys v. CIT (333 ITR 335) (PB 1, Pg. No. 276-284) affirmed by Hon'ble SC in the case of CIT v. Shree Balaji Alloys (80 taxmann.com 239) (SC) (PB 1, Pg. No. 239-240), Hon'ble SC in CIT v. Chaphalkar Brothers (252 Taxman 360) (PB 4, Pg. No. 809-817) and DCIT v. Munjal Auto Industries Ltd (Guj) (Tax Appeal No. 450 with 451 to 453 of 2012) (PB 4, Pg. No. 825-836) SLP Dismissed in DCIT v. Munjal Auto Industries Ltd and others (Civil Appeal No. 6226/2013) (PB 4, Pg. No. 822-824), all have consistently considered both the decisions and yet held that if subsidy is for industrialization or for backward development or employment and not to augment profits, then such incentive is a capital receipt. Assessee relies on all decisions cited in all Paper Books filed.</p>
Pages 10 to 16/Para 3	Summarizes CIT(A) order for five years and submits that order of CIT(A) is non speaking.	<p>Submissions:</p> <p>A detailed written submissions along with factual paper book was filed before the CIT(A). The same is</p>

	<p>DR further comments as under:</p> <p>Does not discuss the facts at all. Does not discuss how subsidy arose and how it was computed. Does not obey the direction of ITAT to examine the facts. Does not explain how decision in Ponni Sugar (supra) case applies. Does not explain how the order of the ITAT(SB) in the case of Reliance Industries Ltd. (supra) still holds good after the Supreme Court's judgment setting aside the High Courts order. It is a totally non-speaking, superficial and perverse order. When there are no facts in the order, how Hon'ble ITAT would decide the matter? Bereft of facts the order cannot be subjected to judicial scrutiny</p>	<p>at Page 59 to 146 of Paper Book;</p> <p>The CIT(A) has passed a detailed order. The discussion on this issue starts from Page 4 to 12/Para 3.</p> <p>The CIT(A) at bottom of Page 9 notes that the Appellant has filed details of all the incentive schemes including notifications of the State Government. Also holds that that applying purpose test as canvassed by Supreme Court in Ponni Sugars (supra) holds subsidy to be a capital receipt;</p> <p>At Para 3.3.3. at Page 10, holds that despite the Hon'ble Supreme Court setting aside Bombay High Court decision in Reliance Industries' case (supra), the ITAT Special Bench decision continues.</p> <p>In the original ITAT proceedings, the matter was restored to the AO and not CIT(A), thus the question of CIT(A) not following directions of ITAT in first round does not arise.</p> <p>Reliance is placed on decisions referred above for the proposition that once material is before CIT(A), he has considered the same, then merely because order is not written in manner expected by the DR, it cannot be said that there is no application of mind by the CIT(A).</p>
<p>Pages 16 to 19 / Para 4</p>	<p>Reproduces Grounds of appeal raised by Revenue for all the years</p>	<p>Factual – No Comments;</p> <p>Grounds are purely legal and don't specifically state that facts are not considered and hence order of lower authorities is perverse.</p> <p>The Department has raised Ground No 1, wherein, the ground is CIT(A) erred in following decision of Bombay High Court in Reliance Industries. The premise is factually wrong as the CIT(A) has relied on decision of Special Bench in Reliance Industries (supra);</p> <p>The present submissions of the Department is mainly on the premise that ITAT should have not entertained additional ground, the AO failed to apply mind and</p>

		<p>examine the facts and same for CIT(A). Once it is undisputed that all facts were provided to AO and CIT(A) and they passed orders and also perusing present grounds raised by the Department which are purely legal, can Department be permitted to argue that since no facts were examined, order of CIT(A) is perverse?</p>
Para 5(i)/Page 19	<p>Submissions of Revenue</p> <p>The ITAT in first round erred in admitting an additional ground based on decision of Special Bench in case of Reliance Industries</p>	<p>The ITAT in its wisdom admitted the additional ground and restored issue to AO to verify facts and allow the claim. While the Assessee had filed additional ground for all five years in present appeals. In so far as it relates to AY 96-97 and 97-98, no appeal was filed before Bombay High Court against the ITAT Order; In so far as It relates to AY 1998-99, the Department filed appeal before the High Court against various other issues but did not raise the issue of admission of additional ground before the High Court; In so far as it relates to AY 1999-00 &amp; 2000-01, the Department raised issue of admission of additional ground by the ITAT, however, the High Court dismissed the said plea of the Revenue. Department did not file/urge the same before Supreme Court; For AY 2001-02, which is not presently fixed before ITAT in this bunch, the Department went to Supreme Court against the Bombay High Court order but did not challenge this issue before Supreme Court; It is thus submitted that in present proceedings, Department cannot be permitted to argue on correctness or otherwise of the ITAT order in first round on admitting additional ground. Thus, there matter stands concluded. Now again Department cannot challenge the settled position.</p>
Para 5(ii)/Page 19	<p>The decision of Special Bench in Reliance cannot be basis of unsettling assessment in case of Assessee</p>	<p>The decision of Special Bench until stayed or reversed by the Bombay High Court cannot be ignored and being a Jurisdictional ITAT order, it is binding on ITAT.</p> <p>Infact, even till date following the Special Bench, the Hon'ble ITAT has been passing order in other cases. In fact, apart from decision of Ahmedabad Tribunal in the case of ACIT v. Genus Electrotech Ltd. (71</p>

		<p>taxmann.com 101) (PB 4, Pg No. 801-808), the Hon'ble Mumbai ITAT in the case of Welspun India Ltd. v. DCIT (104 taxmann.com 267) also considering the Supreme Court set aside Bombay High Court decision in Reliance Industries SB (supra), decided in favour of Assessee. Said decision of Mumbai ITAT has been affirmed by Hon'ble Bombay High Court in the case of PCIT v. Welspun Steel Ltd. (103 taxmann.com 436) (PB 4, Pg. No. 1012-1017).</p> <p>The Assessee has also filed the order of Jurisdictional High Court in Assessee's own case for AY 2001-02 (ITA No. 778 of 2015) where at Para 5, the High Court has observed that decision of Special Bench as on today stands and is not reversed. The Department has not agitated this observation before Supreme Court.</p>
Para 5(iii) to 5(iv)/Page20 & 21	<p>Reproduces in part the order of Hon'ble Supreme Court in Reliance wherein matter was set aside to Bombay High Court;</p> <p>The Supreme Court interfered because decision of Special Bench was perverse</p>	<p>The Supreme Court has merely allowed SLP by setting aside matter afresh to Bombay High Court and directed the Bombay High Court to decide the question of law.</p> <p>The Supreme Court has not commented on Reliance Industries SB decision at all. Thus, to make a statement that Supreme Court held the decision to be perverse is a fallacy.</p> <p>It is settled law that until a decision is reversed by a higher court, it is binding.</p>
Para 5(v)/Page 21	<p>By the time of passing the fresh assessment order, the Hon'ble Supreme Court's judgment was available to the Assessing Officer. In view of the judgment of the Hon'ble Supreme Court, the Assessing Officer did not examine the case further and disallowed the claim of the assessee</p>	<p>At para 7.4 of the assessment order for AY 1999-00 in remand proceedings, the AO held that "Assessee also relied upon various judgements of different High Courts. The said judgements are not applicable to the assessee's case..."</p> <p>This shows that AO has examined the issue in detail and it is not a case that AO did not examine the case further in view of Hon'ble Supreme Court decision in the case of Reliance Industries.</p>
Para 5(vi)/Page 21	<p>The CIT(A) did not deal with the stand taken by the Assessing Officer consequent upon the</p>	<p>The CIT(A) has correctly relied on the decision of SC in Ponni Sugars (Supra) and also decision of Special bench in Reliance Industries SB (supra). He correctly held that validity of Reliance Special Bench continues</p>

	<p>crucial judgment of the Hon'ble Supreme Court. It made a passing reference to the judgment of the Supreme Court and allowed the appeal purportedly following the judgment of the Hon'ble Supreme Court in the case of Ponni Sugars (supra)</p>	<p>notwithstanding the remittance of the matter by Supreme Court to Bombay High Court.</p> <p>The Hon'ble Ahmedabad ITAT in case of Genus Electrotech (supra) held as under</p> <p><i>“Mere admission of appeal against a decision, as is elementary, does not affect the binding nature of a judicial precedent. The Special Bench decision, in the case of Reliance Industries Ltd. (supra), was not reversed by Supreme Court, but was directed to be examined, on merits, by Bombay High Court. That is quite different from disapproving the special bench decision, but it appears that the co-ordinate bench was led to believe, and there could not have been any other reason for ignoring the special bench decision, that this Special Bench decision is reversed. That is patently incorrect, and when it is pointed out to the Commissioner (DR), he did not have much to say except to rely upon the co-ordinate bench decision which seems to have followed that approach. When posed with a special bench decision and a division bench directly on the issue, though touching different chords, there is no difficulty in recognizing the limitations. The wisdom of a division bench, even if superior-as strenuously argued by the Commissioner, has to make way for the higher wisdom of a larger bench. It is this faith of judicial hierarchical system that is the strength of functioning of Tribunal and one must follow the same. The Tribunal rather be guided by the special bench decision - which is exactly what another division bench, on the same set of facts, did in the case of Ajanta Manufacturing Ltd. (supra). There is no dispute that the scheme under which the sales tax and excise duty subsidy are given to this assessee are the same as in the case of Ajanta Manufacturing Ltd. (supra). All the material facts being the same, there is no reason to take any other view</i></p>
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		<p><i>of the matter than the view so taken by the Tribunal. Therefore, the conclusions arrived at by the Commissioner (Appeals), which are in consonance with the Special Bench decision in the case of Reliance Industries Ltd. (supra) are upheld.”</i></p>
<p>Para 5(vii) &amp; 5(viii)/Pages 22 &amp; 23</p>	<p>The Assessee had not claimed exemption in its original return and assessments were settled. The same was correct as sales tax is a trading receipt, following Supreme Court decision in case of Chowringhee Sales Bureau v. CIT (WB) [1973]87 ITR 542 (SC) and Sinclair Murray and Co. Pvt. Ltd. V. CIT, Calcutta,[1974]97 ITR 615.</p> <p>The concluded assessment are now sought to be reopened on controversial decision of Reliance Special Bench. Assessee is seeking to claim refund of taxes paid years ago.</p> <p>Now that that decision of the ITAT Special Bench has been set aside, the <i>raison d’etre</i> is gone. This decision of the Hon’ble Supreme Court will relate back and the decision of the Hon’ble ITAT setting aside the assessments on the basis of this controversial decision of ITAT Special Bench</p>	<p>The decision of Hon’ble Supreme Court in Chowringhee (supra) and Sinclair (supra) both are in different context.</p> <p>It is not disputed the generally the sales tax collected by an Assessee from its customer is a trading receipt. However, the question in present appeals is whether the exemption from sales tax due to Schemes/Notification of the respective State Government due to setting up industries in notified area is exempt or not.</p> <p>The Supreme Court in case of Ponni Sugars (supra), Balaji Alloys (supra) and Chaplakar Brothers (supra) have consistently held that subsidy/incentive in whichever form, if received for setting up industries or industrialization or employment then it is a capital receipt.</p> <p>The decision of Special bench in Reliance has not been set-aside by the Supreme Court and thus presently the said decision is subsisting and binding.</p> <p>The Tribunals even post set-aside of Bombay High Court order in Reliance Industries by Hon’ble Supreme Court, follows Reliance Industries Special Bench decision;</p> <p>Reliance is misplaced of decision of U.P. Rashtriya (SC) (supra). In present case, the CIT(A) has followed decision of Supreme Court in Ponni Sugar (supra) decision in Reliance Industries. Both the decisions are subsisting and not stayed by any Court. In fact, as on date, post Ponni Sugars (SC) (supra), the Supreme Court in Balaji Alloys (supra) and also Chapalkar Brothers (supra) have reiterated that subsidy for development of back ward area is a capital receipt.</p>

	<p>becomes non-est.</p> <p>Reliance is placed on Hon'ble Supreme Court in the case of U.P. Rashtriya Chinni v. The State of U.P. and Ors. Dated 2<sup>nd</sup> July 1995 , 1995 AIR 2148, 1995 SCC(4) 738 for the proposition that once the correctness of a judgement is doubted by the higher court, the said judgement is to be treated as non est.</p>	<p>Post Chapalkar Brothers (supra) too, SLPs filed by Department have been dismissed.</p> <p>In Appellant's own case for (PCIT Central -1 v. Grasim Industries Ltd., (ITXA 778/2015 AY 2001-02), the Jurisdictional High Court inter alia observed as under: <i>"It is true that the judgment of this court confirming the order of the Tribunal in the case of Reliance Industries Ltd. has been partially reversed by the Supreme Court. A question of law has been framed and has been placed for consideration of the High Court. However, this does not mean that the judgment of the Tribunal as on today stands reversed or stayed"</i></p> <p>Lastly it is settled law that the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. Reliance is placed on the decision of Hon'ble Bombay HC in the case of Balmukund Acharya v. DCIT (310 ITR 310) whereby Article 265 of the Constitution has been relied upon to hold that entitled to where the tax is levied or collected without authority of law.</p> <p>Now if the Supreme Court holds that subsidy is capital receipt, Assessee is entitled to claim refund of taxes wrongly paid earlier.</p>
<p>Para 5(ix) and 5(x)/Page 23 &amp; 24</p>	<p>The Bombay High Court in Assessee's own case for AY 2001-02 (wherein the High Court held that additional ground on sales tax subsidy can be admitted and dismissed Department appeal) is per in curium since it did not consider Supreme Court decision in U.P.Rashtriya Chinni (supra).</p>	<p>Please see comments in Para above. In any event, against the Bombay High Court decision, though department filed SLP they did not challenge observation on the aspect of admission of additional ground. In any event, as of date, the decision of Reliance Special Bench is valid and subsisting.</p>
<p>Para 6(i)/Page 24</p>	<p>While setting aside the assessment, the Hon'ble ITAT had observed that the issue requires proper examination and</p>	<p>Para 6 is entire repetition to the effect that neither AO not CIT(A) has discussed any facts.</p> <p>The Assessee relies on submissions made on this aspect against Para 2 and 3 above.</p>

	<p>verification of the nature of the benefit and the scheme of the Government under which the benefit has been availed by the Assessee. Accordingly the Hon'ble ITAT has restored this issue back to the file of the Assessing Officer and directed the Assessing Officer to decide the issue afresh after considering the decision of the Special Bench in the case of Reliance Industries Ltd. (88 ITD 273 and after giving reasonable opportunity of being heard to the assessee</p>	
<p>Para 6(ii), 6(iii), 6(iv) &amp; 6 (v)/Page 24 and 25</p>	<p>The AO did not follow direction of ITAT. He simply noted that decision of Special Bench has been set aside by the Supreme Court. He has not examined the facts of any scheme to come to any conclusion as to whether they are revenue or capital receipt. So, for whatever reason, the purpose for which the assessments have been set aside have not been achieved.</p> <p>The CIT(A) also has not discussed any facts but has given complete relief. He has passed five identical appellate orders for the five assessment years giving a relief of</p>	

	<p>over Rs.162 crores without discussing facts of any case.</p> <p>The CIT(A) does not discuss the schemes and their objectives. He does not mention what papers were filed before him. He does not mention how he was satisfied that the 'purpose test' laid down by the Hon'ble Supreme Court in the case of Ponni Sugars and Chemicals Ltd. has been satisfied in respect of each of the schemes.</p> <p>The CIT(A) has not taken cognisance of the fact that the Assessing Officer has not decided the issue of sales tax incentive in accordance with the direction of the Hon'ble ITAT. Hence, in compliance with the direction of the Hon'ble ITAT, the CIT(A) ought to have called for a full factual remand report from the Assessing Officer about the objective and nature and quantum of the purported subsidy in respect each scheme. He has not done that. In the alternative, the CIT(A) ought to have conducted the necessary enquiries himself as his powers are co-terminus with the</p>	
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	<p>powers of the Assessing Officer. All the facts should have been brought on record and the basis of arriving at the conclusion should have been evident from a self-contained comprehensive speaking order of the CIT(A) so that his order could have been subjected to judicial scrutiny. The CIT(A) has not done that also. It is a brief order completely bereft of facts. The CIT(A) seems to say that he has seen the papers and has been satisfied and nothing further needs to be done. The order of the CIT(A) is in complete violation of the direction of the Hon'ble ITAT and is perverse.</p>	
<p>Para 8/Page 27</p>	<p>Exemption provisions should be strictly construed against the subject</p> <p>A cardinal principle of statutory interpretation is that while taxing income, in case of ambiguity, the provisions of tax laws should be liberally interpreted in favour of the subject, whereas, while applying the exemption provisions, the tax laws should be strictly interpreted against the subject in case of ambiguity. This is because</p>	<p>The moot issue in present proceedings is whether sales tax/purchase tax/ entry tax subsidy/incentive, by whatever name called, by State Governments for development of specific areas/under-developed or backward areas is a capital receipt and hence not chargeable to tax.</p> <p>The question whether Assessee was eligible sales tax/entry tax subsidy, whether it complied with the conditions under respective schemes or notifications etc were to be decided by respective State Government and their monitoring or implementing agency. It has to be noted that as on date there is no dispute by such authorities on eligibility of Assessee to claim exemptions.</p> <p>Once the subsidy or benefit under the Scheme is not disputed by respective State Government, the question under the Income Tax Act is whether such</p>

	<p>by getting exemption, the burden of taxation is shifted to other taxpayers. This is discussed in the decisions of the Hon'ble Supreme Court in the case of Novopan India Ltd. Hyderabad v. Collector of Central Excise and Customs, Hyderabad dated 14<sup>th</sup> September 1994 (Case : Appeal (Civil) 3556 of 1984) (1994 Supp(3) Supreme Court Cases 606</p>	<p>benefits are on capital account or not. The Supreme Court has repeatedly in Ponni Sugars (supra), Balaji Alloys (supra) and Chaphalkar (supra) have held the same to be on capital receipt.</p> <p>Also, unlike deductions or exemption like section 10 or Chapter VI, which may or may be conditional or subject to compliance of specific requirement, in present case, there are no conditions to be complied with under Income Tax Act.</p> <p>In fact, the decision of Supreme Court in Novopan (supra) was in context of whether the assessee claimed that manufactured melamine faced particle boards MFPB was same as unveneered particle boards which were entitled to total exemption from tariff under item 6 of Exemption Notification No.55 of 1979. In this context the Supreme Court held <i>"The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee – assuming that same principle is good and sound- does not apply to the construction of an exception or an exemption provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability, must establish clearly that he is covered by the said provision. In case of doubt or ambiguity benefit of this must go to the State"</i></p> <p>Thus, clearly in Novopan's case, the question was whether assessee was covered under an exemption notification or not and in that context, it was held that where a person invokes an exemption provision, he must prove he is covered by it and in case of doubt, the benefit should go to the State.</p>
<p>Para 9 (a)/Page 30 and 31</p>	<p><b>This doctrine of strict interpretation of exemption provision has been rampantly violated in this case and uncalled-for indulgence has been given to the assessee</b></p>	<p>If Department has any grievance against decision of Reliance Special Bench (supra), it can challenge the same before appropriate forum.</p> <p>Reliance is placed on the decision of Hon'ble Bom HC in the case of ITO v. Universal Ferro &amp; Allied Chemicals Ltd. (172 ITR 30) (PB 7 Pg. no. 1378-</p>

	<p><b>Para 9(a): Decision of Reliance Industries (Special Bench)</b></p> <p><b>The ITAT Special Bench did not consider Novopan;</b></p> <p><b>The ITAT Special Bench decision has serious flaws</b></p>	<p>1383, specifically Para 7) whereby it was held that once the Special Bench of the Tribunal records the decision after considering the judgement given by the High Court, then the decision of the Special Bench is binding on all other authorities subordinate to the Tribunal.</p> <p>Lastly, in Assessee's submission, as stated above, reliance placed by DR on Novopan (supra) is misplaced.</p>
<p>Para 9(b)/Page 31</p>	<p><b>The order of the Hon'ble ITAT setting aside the assessment for five assessment years is against the law laid down by the Supreme Court discussed above;</b></p> <p>The assessee was allowed exemption by the State Government for all five years;</p> <p>Following Chowringhee Sales Bureau v. CIT (WB) [1973]87 ITR 542 (SC) and Sinclair Murray and Co. Pvt. Ltd. V. CIT, Calcutta,[1974]97 ITR 615), sales tax collected was part of turnover and since nothing was paid, it became profits. The auditors accepted the same, returns were filed and taxes were paid;</p> <p>No appeal was filed before CIT(A), only after ten years this additional ground was raised for the</p>	<p>At the cost of repetition, the Assessee again submits that the present appeals by Department is against the order of CIT(A) in second round wherein the CIT(A) held that sales tax incentive/subsidies/exemptions is a capital receipt but directed the AO to verify the quantification thereof.</p> <p>The Department had challenged the action of ITAT in admitting the additional ground in first round before the Hon'ble High Court. The Hon'ble High court has decided the matter in favour of the Assessee. The Department filed SLP against Bombay HC Order for AY 01-02 but not challenged the ground of admission of add. ground by the ITAT. In fact, for other years, the Department has not even filed SLP before Supreme Court.</p> <p>Once this issue is settled, Department cannot be allowed to agitate this in present proceedings. Also, this is not the ground before ITAT in present proceedings.</p> <p>In so far as decision of Chowringhee (supra) and Sinclair Murray (supra), the question before Supreme Court as not whether sales tax incentive is a capital receipt or not.</p> <p>If today the Supreme Court in Ponni Sugars (supra), Balaji Alloys (supra) and Chaphalkar Brothers (supra) have consistently held that sales tax incentive</p>

<p>first time before ITAT;</p> <p>The ITAT should have asked searching questions as this ground would reduce assessed income below returned income;</p> <p>It is unfair to the Department to give refund of amount of tax suo motto paid by the Assessee and this would be burden on the non exempt tax payers;</p> <p>The only basis for filing additional ground before ITAT was decision of Reliance Industries Special Bench. There the so -called subsidy related to only one state where here the subsidy concerned several states under different schemes. On this ground alone, the additional ground should have been thrown out as vexatious.</p> <p>The ITAT admitted the additional ground and set aside for examination and verification of nature of schemes and benefits. Additional ground cannot be entertained for fresh investigation into facts. It can be entertained on a pure question of law.</p>	<p>under State Policies for development of areas of State is capital receipt, then it is settled law that State cannot retain tax wrongly paid or recovered.</p> <p>In so far as refund of tax suo-moto paid by the Assessee is considered, reliance is placed on the decision of Hon'ble Bom HC in the case of Balmukund Acharya (Supra) referred to above.</p>
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<p>Para 10/Page 33</p>	<p><b>Exemption of payment of sales tax is not a subsidy</b></p> <p>“Subsidy” and “Incentive” are different concepts – Different dictionary cited.</p> <p>The above definition clearly states that the subsidy is a quantified sum given from a government agency to a private enterprise. It is directly from the government to the private party and there is no ambiguity about the amount of subsidy. It is not like sale tax exemption where sales tax is purportedly collected from the customers and retained by the party and is deemed to be a subsidy; a third party, Sales-tax Officer, adjudicates about the quantum of notional sales tax subsidy and the assessee expects the Income-tax Department to adopt that figure;</p> <p>Thereafter, decisions tabulated to substantiate that in all cases, it was actual subsidy received and not notional</p>	<p>List of judgements of Hon’ble SC relied upon by the Assessee wherein tax incentive/exemption was held to be a subsidy capital in nature:</p> <ul style="list-style-type: none"> <li>• Sahney Steel (supra): apart from other incentives received, there was exemption from payment of water rate;</li> <li>• Ponni Sugars and Chemicals (supra): The incentives conferred under that scheme were two-fold. First, in the nature of a higher free sale sugar quota and second, in allowing the manufacturer to collect the excise duty on the sale price on the free sale sugar in excess of the normal quota, but to pay to the Government only the excise duty payable on the price of levy sugar;</li> <li>• Munjal Auto Industries Ltd. (SLP Dismissed) (supra):</li> <li>• Chaphalkar Brothers Pune (supra)</li> </ul> <p>Further Hon’ble Mum T in the case of Reliance Industries Ltd (subsequent assessment years viz. AY 2010-11 to 2012-13) vide order dated 28.09.2018 followed the decision of Special Bench and held that “7. <i>We heard the parties on this issue and perused the record. The assessee has been given Sales tax exemption by Government of Gujarat and Uttar Pradesh and <u>the Special bench of Tribunal in the assessee’s own case (referred supra) has held the notional sales tax receipt is Capital in nature.</u> We notice that the co-ordinate benches of Tribunal has followed the decision rendered by the Special bench in AY 2003-04 to 2009-10 and upheld the decision rendered by Ld CIT(A) in holding that the Sales tax incentive is capital in nature....“</i></p> <p>Attention is also invited to amendment to definition of “income” u/s.2(24)(xviii)...where the Legislature has used expression “..assistance in the form of subsidy, grant, incentive....(by whatever name called)”. Thus, the Assessee submits that form of</p>
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		<p>assistance and nomenclature is not relevant and as stated above various decisions have used incentive, subsidy, grant interchangeably.</p> <p>The Assessee also submits that the amount of subsidy/incentive/notional subsidy as per relevant Scheme is quantified generally as a % of capital investment and thus fixed. The State Government only provides the said incentives based on the amount of notional sales tax yearly. Outer limit of incentive is fixed. Further, it is only mode of granting the incentive which can be different. The State Government may give cash incentive or State Government would forgo its right to certain state revenues and thereby fulfil its promise to provide incentive in an indirect manner.</p>
Para 11/Page 38	Exemption from payment of sales-tax is only an incentive provide to the industry. Unlike subsidy, which, by its very nature is quantifiable, incentive is rather abstract and cannot be easily quantified	The quantification was based on State Government Schemes. Once the State Government has not disputed the same, it cannot be questioned in income tax proceedings where the only issue is whether such incentives are capital receipt or revenue receipts.
Para 12/Page 39	<p>Incentive – <b>exemption from payment of sales tax cannot be quantified.</b></p> <p>The concept of notional subsidy may be relevant for statistical purposes for estimating roughly what sales tax has been foregone for assembly debates or formulation of economic policies, but it has no place in the Income-tax Act for allowing deduction</p>	<p>The incentives on account of exemption of sales tax, purchase tax or entry tax, etc is given by respective State Governments;</p> <p>The respective State Government would have a monitoring or an implementing agency who would govern and monitor the grants/subsidy or incentive as also compliance of terms for the said subsidy/grant.</p> <p>In so far as Maharashtra Scheme is concerned, the Scheme itself defines and explains what is a “notional” sales tax liability (NSTL) (PB 2/Page 376). In present case, the NSTL is also quantified by sales tax officer (PB 2/Page 553).</p>

	<p>The third situation is when he collects the full sales tax and does not pay to the government. Though it is against the law, as the assessee is required to pass on the benefit to the customers, that is an issue to be addressed by the Sales-tax Department. The Income-tax Department is concerned with the quantum of the exemption claimed. It is for the assessee to establish with proper sales bills showing sales-tax amount separately and maintaining the so-called subsidy register meticulously for verification.</p> <p>Hence, it is impossible to find out what is the exact amount of the so-called notional subsidy unless the assessee maintains proper sale bills and registers on the basis of which the exact amount of sales-tax collected and not paid during the year can be found out. Thus, relying on decision of the Hon'ble Supreme Court in the case of Novopan India Ltd. Hyderabad v. Collector of Central Excise and Customs, Hyderabad dated 14<sup>th</sup> September 1994 (Case : Appeal (Civil) 3556 of</p>	<p>Further, please see eligibility certificate at PB 2/Page 400 where SICOM has issued Eligibility Certificate, where various conditions are stipulated, including requirement of maintaining proper accounts, etc (PB 2/Page 401 &amp; 402).</p> <p>Thus, the authorities who are in charge of monitoring and implementing have not found fault with the Assessee's claim based on eligibility certificate and hence, it is submitted the entire argument of DR that no one has monitored, how and when the subsidy is computed etc should not be accepted.</p> <p>Infact, as rightly stated by DR, the issues, if any are to be addressed by the Sales Tax Department. In present case, the Assessee has quantified in absolute terms as seen from PB4/Page 1167 and all supporting document including sales tax return or order are part of record and no adverse comment has been made by the respective authorities and the AO and CIT(A).</p> <p>Reliance on Novopan (supra) in present proceedings to determine whether a receipt is capital or revenue is misplaced.</p>
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	1984) (1994 Supp(3) Supreme Court Cases 606 (supra), the assessee has failed this test and the claim of exemption should be rejected outright													
Para 13 and 14 /Pages 41 to 45	Letter dated July 17, 2019 and May 3, 2019 filed by Department Counsel seeking certain factual differences etc	<p>1. Additional ground on the impugned issue was filled with Honb'ble Tribunal in April 2006. The Tribunal remanded the matter to the file of AO to consider and decide the issue as per the provisions of the Income-tax Act, 1961 ('the Act'). Subsequently, the Assessee made elaborate submissions before the AO in proceedings u/s. 143(3) r.w.s. 254 of the Act. These documents are available at page 26 to 58 of the paper book-1. The relevant index containing list of documents filed with AO are at following pages for respective years.</p> <table border="1"> <thead> <tr> <th>AY</th> <th>Page No. of Paper Book 1</th> </tr> </thead> <tbody> <tr> <td>1996-97</td> <td>33</td> </tr> <tr> <td>1997-98</td> <td>40</td> </tr> <tr> <td>1998-99</td> <td>49</td> </tr> <tr> <td>1999-00</td> <td>54</td> </tr> <tr> <td>2000-01</td> <td>58</td> </tr> </tbody> </table> <p>The AO did not accept the contention of the Assessee and decided the matter against it. Accordingly, the Assessee filed an appeal before CIT(A) against the order u/s. 143(3) r.w.s. 254 of the Act. Subsequently, CIT(A) vide order dated 25.01.2016, allowed the claim of the Assessee and directed the AO to verify the claim in terms of quantification thereof. The AO gave effect to the order of CIT(A) vide order dated 25.04.2016. Copy of order giving effect to the order of CIT(A) is enclosed at Page No. 78 to 89 of Paper Book – 4.</p> <p>2. Basis of calculating subsidy and supporting documents such as scheme related papers,</p>	AY	Page No. of Paper Book 1	1996-97	33	1997-98	40	1998-99	49	1999-00	54	2000-01	58
AY	Page No. of Paper Book 1													
1996-97	33													
1997-98	40													
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		<p>eligibility certificate etc. were already filed before the AO during proceedings u/s. 143(3) r.w.s. 254 of the Act. The same can be checked at page 26 to 58 of the paper book -1.</p> <ol style="list-style-type: none"><li>3. The amount of sales tax subsidy is based on the amount as per final assessment order in each of the years except in few cases the amount is as per return where the case was not selected for assessment. Please see PB 4/Page 1167.</li><li>4. The AO while giving effect to ITAT direction has right adopted the exact figures supported by documents like Scheme/Notification&gt;Returns or Assessment orders under respective state laws. Post CIT(A) order also, once again he has reconfirmed the figures of exemption claimed. Thus, in present proceedings, the Department cannot improve its case where both AO and CIT(A) have not disputed the amount. In any event, as stated above, the subsidy/incentive is generally linked to % of capital investment and thus there is a fixed cap on the same and variation, if any in a particular year would only lead to change in subsequent year and thus, at best, is a timing difference.</li><li>5. On perusal of the record, the Assessee is not able to understand from where Ld. DR is referring in point no. 6 of his letter dated 17.07.2019.</li><li>6. With reference to point no. 7 of letter dated 17.07.2019, it is submitted that the amount of sales tax subsidy is embedded in the value of sales and not accounted separately.</li><li>7. With reference to point no. 8 of letter dated 17.07.2019, it is submitted that no implementing agency who has power to monitor has made any adverse comments.</li><li>8. With reference to point no. 9 of letter dated 17.07.2019, it is submitted that all the facts were duly submitted before the AO and CIT(A) and there is no mention of incomplete details by the AO / CIT(A).</li><li>9. It is humbly submitted that since the figures of the subsidies/incentives are not disputed by the AO or CITA(A) or the AO post CIT(A)'s order,</li></ol>
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		the DR cannot now raise the issue and make a completely new case.
Para 15/Page 45	In subsequent hearings also the Department made request to ITAT to direct Assessee to give all details but the Counsel of Assessee was evasive.	<p>It may be noted the Assessee is a respondent and appeal is filed by the Department. The Assessee has given all documents before AO, CIT(A) and ITAT.</p> <p>In present proceeding also, the DR has not referred to those documents as accordingly to DR, the same are irrelevant. If DR chooses not to specifically point out any error from documents filed, it cannot be alleged that the Assessee is evasive.</p> <p>The Assessee has referred to PB4 Pg. 1167 and it has established nexus between various schemes and Sales tax assessment orders/Sales tax Return. Further the Assessee also specifically demonstrated the same for AY 1996-97 since the Department has not at all disputed the chart on Pg 1167 by way of a separate chart filed during the course of hearing on April 7, 2022.</p>
Para 16/Page 45	The assessee is not co-operating in providing the vital information which is material for proper disposal of the appeal. The information is within the personal knowledge of the assessee In absence of all data being submitted, it should be presumed that assessee has no answer to queries.	All the details filed before AO and CIT(A) in second round (post set aside after admission of additional ground by the ITAT) are in Paper Books. Detailed submission to counter this allegation made above.
Para 17/Pages 46 to 48	Reliance is placed on decision of Mumbai Tribunal in Bajaj Auto (90 ITD 153) for definition of “Notional Sales Tax Subsidy”.	The observations made in case of Bajaj Auto (supra) in respect of ITAT order in Reliance for AY 1985-86 have been considered and dealt with by Special Bench decision in case of Reliance Industries (supra).

	<p>Thus, definition is not simple. The definition does not deal with the situations discussed in paragraph 12(ii) where no sales -tax has been collected or less sales tax has been collected. In such cases the assessee will get relief from income-tax in respect of part of its non-exempt profit. Second – the time lag.</p> <p>If the concept of notional subsidy and its determination by the Sales Tax authorities is adopted into income-tax, no income-tax returns can be filed in time.</p> <p>-The notional sales subsidy cannot be subjected to audit.</p>	
Para 18/Page 49	<p>Reliance is placed on decision of Supreme Court in CIT Bangalore v. B. C. Srinivas Shetty [1981] 128 ITR 294(SC).</p> <p>There is no provision in the Income-tax Act for quantifying the so-called notional subsidy. The assessee does not maintain the primary records on the basis of which the notional subsidy can be worked out independently.</p>	<p>The reliance in decision of Supreme Court in B.C. Srinivas Setty (supra) is misplaced.</p> <p>In present case, the simple issue is based on the purpose of the scheme of State Government, the sales tax/entry tax incentive is capital receipt or not. The amount of such incentive is to be quantified by the respective State Governments or implementing agencies. They monitor the conditions in the eligibility certificates.</p> <p>Once they have not objected to the same and granted incentives, for the direct tax proceedings, the Department cannot draw support to say that if machinery provisions fails, the charge fails.</p>
Para 19, 20/Page 49	<p>Legal Position: Notional Sales Tax Subsidy is</p>	<p>In so far as decision of Chowringhee (supra) and Sinclair Murray (supra), the question before Supreme</p>

<p>and 50</p>	<p>revenue receipt.</p> <p>Sales tax was collected from the customer and not paid and hence profits increased. See Chowringhee (SC).</p> <p>Because of the nature of regular transactions and incremental profits accruing to the assessee on day to day basis, there is no scope of holding it to be of the nature of capital receipt. The natural presumption is that it is a revenue receipt. If the assessee claims it to be capital receipt, as held by the Hon'ble Supreme Court in the case of Novopan India Ltd. (supra), the burden is on the assessee to establish it with documentary evidence as to how it was accounted for and utilized</p>	<p>Court is not whether sales tax incentive is a capital receipt or not.</p> <p>The Supreme Court in Ponni Sugars (supra), Balaji Alloys (supra) and Chapalkar Brothers(supra) have consistently held that sales tax incentive under State Policies for development of areas of State is capital receipt.</p> <p>Also, once Sales Tax and Entry tax department has not disputed the claim of exemption, under the Income Tax Act, the question is whether such incentive/subsidy is "capital receipt" and not income. Thus, the reliance on decision of Novopan (supra) is misplaced.</p>
<p>Para 21/Page 50</p>	<p>Reliance is placed on Hon'ble Calcutta High Court in the case of Kesoram Industries and Cotton Mills Ltd. v. CIT [1991] 191 ITR 518 (Cal.)</p> <p>What was the matter between the assessee and the Sales- Tax Department is no concern to the income-tax Department.</p> <p>The matter would have been different if it had</p>	<p>Subsequent to the decision of Kesoram Ind (supra), the Hon'ble SC in the case of Ponni Sugars and subsequently in its recent decisions of Chaphalkar (supra), Balaji Alloys (supra) and Munjal (supra) has consistently held that the only test to hold whether a subsidy is a capital receipt or revenue is its object and purpose.</p> <p>Further, Hon'ble Tribunal in the case of DCIT v. Indo Rama Textiles Ltd (25 taxmann.com 161) (Del. Trib.) (PB 4 Pg no. 1116-1120) held that sales tax subsidy is a capital receipt despite reliance placed by the DR on the decision of Kesoram (Supra).</p> <p>Further, Hon'ble SC in the case of Ponni Sugars</p>

	<p>received a fixed sum from the government. In that case the taxability of that receipt – whether revenue or capital - could have been issues before the Income -tax Department. Exemption from sales tax is not an issue.</p> <p>However, if the assessee is of the view that it is entitled to exemption, it has to establish its case for exemption independently with supporting primary books and documents, under the doctrine of strict construction of exemption provisions as propounded by the Hon'ble Supreme Court in the case of Novopan India Ltd. (supra).</p> <p>It cannot wake up after 10 years, cite an inapplicable judgment of a Tribunal, which in any case not relevant now in view of the Supreme Court setting it aside.</p>	<p>(supra) has observed that form and the point of time at which subsidy is paid is irrelevant.</p> <p>Also, Sales tax exemption is a fixed sum is quantified as a % of capital investment and thus a fixed sum of money to be received over a period of time. Similar were the facts in the case of Munjal Auto Ind (Guj HC) (SLP Dismissed) (supra) wherein the sales tax exemption was to the extent of a fixed percentage of capital investment which could be availed over a period of 9 years (Pg 831 of PB 4).</p> <p>As already stated above, the reliance placed on Novopan (supra) is misplaced.</p> <p>If some benefit of tax arises to the Assessee, as held by various Hon'ble HCs and Hon'ble SC, then the Assessee cannot be stopped from acting as it may deem fit, to seek the refund as may be due to it as per the law. Reliance is placed on the decision of Balmukund Acharya (Supra).</p>
<p>Para 22 (i)/Page 52 to 56</p>	<p>The Department reproduces the summary of Schemes prepared by Assessee;</p>	<p>Factual. No comments</p>
<p>Para 22(ii)/Page 56 and 57</p>	<p>From the summary of the scheme furnished by the assessee the</p>	<p>The DR is wrong in his conclusion that object of</p>

	<p>common features of the schemes are as under:</p> <p>(d) The objects are general like dispersal of industries from Bombay-Thane- Pune belt to outside. boost up of new industrial development in the state, accelerating the pace of development. They are common objectives of any incentive system. It does not follow that all incentives would be capital in nature.</p> <p>(e) The incentives are given after the commencement of business. The presumption is that the incentive is of revenue nature [Vide the decision of the Hon'ble Supreme Court in the case of Sahney</p>	<p>scheme generally is dispersal of industries from Bombay-Thane-Pune belt (Assessee would specifically address this point);</p> <p>The Department is correct that some objectives are for industrial development in the State and also to accelerate development. The judicial pronouncements relied by Assessee clearly hold that if a subsidy is for industrialisation, growth and employment generation, it is on capital account;</p> <p>If incentives are given after commencement of business, presumption is that the incentives is of revenue nature – The Assessee submits that this submission of Department is contrary to ratio and observations of following decisions of High Court and Supreme Court</p> <p>Para 14 of decision of Supreme Court in Ponni Sugars (supra) wherein specifically, it has been held that “it is the purpose test is which is relevant and the point in time and form and source of subsidy is immaterial”</p> <p>The J&amp;K High Court in Shree Balaji Alloys Vs. CIT (supra) held that the Tribunal erred in concluding that incentives in form excise refund and interest subsidy received were revenue by emphasising on the fact that incentives were not available unless commercial production started as also that the incentives were recurring in nature and limited to period of 10 years from date of commencement of commercial production. The High Court applied purpose test and reversed decision of Tribunal and held above incentives were capital receipt. The SLP filed by Department is dismissed.</p> <p>The Supreme Court in CIT Vs. Chaphalkar Brothers (supra) affirming decision of Jurisdictional Bombay High Court held that where object of subsidy was</p>
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	<p>Steel and Press Works Ltd. v. CIT, 1997,228 ITR 253( SC) ]. It is for the assessee to establish with documents how it is capital receipt. [Vide Supreme Court decision in the case of Novopan India Ltd. (supra) laying down the doctrine of strict construction of exemption provisions against the assessee].</p> <p>(f) The incentive continues for years – here 10 years, 5 years, 9 years and 11 years. As discussed in paragraph 20 above, the incentive is continuously received for years and the assessee received incremental indirect benefits, not any direct</p>	<p>development of multi theatre complexes, it would be a capital receipt. Para 25 of Supreme Court decision at PB4 Page 817 clearly holds that once object of the subsidy was to industrialise and generate employment, <b>the fact that subsidy too a particular form and fact that it was granted only after commencement of production would not make any difference.</b></p> <p>The Supreme Court in CIT Vs. Munjal Auto (supra) (PB4 Pages 822 to 824) while dismissing SLP filed by Department upheld view of Gujarat High Court. The Revenue had taken a specific argument at Para 3 (PB4/Page 829) that since subsidy would be received only once unit goes for production, subsidy was of revenue nature. The High Court referred to the relevant Scheme, also noted that concession was capped at 125% of fixed capital investment and could be availed within 9 years. After considering decision of Supreme Court in Ponni Sugar (supra) &amp; Sahney Steel (supra), the High Court held that though the subsidy was computed in terms of sales tax deferment and necessarily therefore, accrue after commercial production, this by itself would not be sole or concluding factor. Applying purpose test, the subsidy was held to be on capital account.</p> <p>Thus, in each of above cases, the Courts have been mindful of the fact that subsidy was to be received after commencement and to be availed within 9, 10 or 12 years, yet applying purpose test, it was held that subsidy was on capital account.</p> <p>The Department is consistently repeating that in the original return the Assessee did not claim exemption paid taxes and now after decades assessee has raked up the issue of capital receipt. The Assessee submits that post its filing its return of income, if subsequent judicial pronouncement hold that subsidy received is a capital receipt, and such view is also rendered by the Supreme Court then there should be no bar on the Assessee in making additional claim and seeking</p>
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	<p>lump sum receipt. Then the strong presumption according to the normal conduct of business, is that the incentive supplemented the profit of the business and was of revenue nature. <b>The most important point is that assessee in its original return of income treated the transaction, and rightly so, as revenue in character and paid the taxes.</b> But, as narrated earlier, after more than a decade the assessee has raked up the issue of capital receipt. If the assessee claims it to be capital receipt, the burden is for the</p>	<p>refund of taxes paid inadvertently. In any event, the order of Tribunal in admitting additional ground has become final.</p>
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	<p>assessee to establish with evidence that it is a capital receipt.[ Vide Supreme Court decision in the case of Novopan India Ltd. (supra) laying down the doctrine of strict interpretation of exemption provisions against the assessee].</p>	
<p>Para 23/Page 57 to 61</p>	<p>At the instance of Department Counsel, the AO gave comments on submissions of the assessee on the Schemes as under:</p>	<p>While as demonstrated above that the AO and CIT(A) has examined all the Schemes, Notifications, Eligibility Certificates, etc, this further proves that now 3<sup>rd</sup> time, AO is examining the said documents.</p>
	<p><b><u>Vikram Ispat, Division of Grasim Industries Limited - Sales Tax Exemption</u></b></p> <p>As per Preamble, the New Scheme is launched to intensify and accelerate the process of dispersal of industries outside the Bombay-Thane-Pune Belt and to attract them to the underdeveloped and developing areas of the State.</p>	<p>Package Scheme of Incentive(“PSI”), 1988 dated 01.10.1988 by State of Maharashtra</p> <p>Preamble:- In order to achieve dispersal of industries outside the Bombay- Thane- Pune Belt and to attract them to the underdeveloped and developing areas of the State, Government has been giving a Package of Incentives to New Units / Expansion set-up in developing region of the State since 1964 under a Scheme popularly known as PSI. (Page 369 of PB)</p> <p>In light of the experience gained from earlier schemes, the Government has decided to bring in new Scheme i.e. Package Scheme of Incentives 1988.</p> <p>The Department conclusion that only if an existing unit is relocated to backward area is eligible is fallacious. See PB 2/Page 369/370 which list down</p>

	<p>Only if existing industry in Bombay-Thane-Pune belt are relocated in backward area then they would enjoy incentives. However, if a unit is set up in backward area but not relocated from Bombay-Thane-Pune belt then incentives not available.</p> <p>For the purpose of grant of such subsidies, <b>the methodology of working was based on the value of investments made in these backward/notified areas, which may also include the value of plant &amp; machinery dismantled and relocated to these notified areas from the Mumbai-Thane-Pune belt.</b> The Scheme is silent about relocation of Industrial Units from other areas than the specified Mumbai-Thane-Pune belt.</p> <p>Therefore, it cannot be said that the Package Scheme of Incentive 1988, of State Government Maharashtra was meant <b>at large for all the units setup in the notified</b></p>	<p>Group A,B,C &amp; D specifying developed, under developed areas of the State. Page 373 further states that an existing or a new unit....would also be eligible. New Unit has been defined at Page 376. Pioneer Unit has been defined at Pg. 378 as a large scale New unit set up after October 1, 1988. The Assessee is a Pioneer Unit (PB 2 Page 399 is the eligibility certificate issued by SICOM which recognises Vikram Ispat unit as a Pioneer Unit). Thus, under the Maharashtra 1988 Scheme, even new units are entitled to notional sales tax subsidy.</p> <p>Judgments relied upon by the Assessee wherein the subsidy received under the PSI Sales tax exemption scheme of Maharashtra has been held to be capital in nature is tabulated in a Chart attached herewith as <b>Annexure A.</b></p>
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	<p>areas, and hence the purpose of Scheme was not for the setting up of new units, but was primarily for the purpose of decongestion and dispersal of the units located in the Mumbai-Thane-Pune belt/corridor.</p>	
	<p>7) <b><u>Chloro Sulphuric Acid Division and Caustic Soda Membrane Cell Division of Grasim Industries Limited - Entry Tax exemption</u></b></p> <p>The certificates and other documents filed during the course of set-aside proceedings <b>speaks of the capital investment only for the purpose of computation/working of subsidy and not indicate the same as the sole criteria for eligibility for the benefit of scheme.</b></p>	<p>The Department itself refers to certificates and other documents filed in course of Set-Aside proceedings. Thus, all documents are in possession of AO.</p> <p>Entry Tax Notification No.422-6596 dated 09.02.1977 under Madhya Pradesh Sthaniya Kshetra Me Mal ke Pravesh Par Kar Adhinyam, 1976</p> <p>Exemption granted to new industry including any such substantial expansion of an existing industry as may be approved by the Government (Pg. 460 of PB) with the object of promoting industrial development in the State by setting up of new industrial units within the State of Madhya Pradesh.</p> <p>New Industry Notification No.A-3-24-94-ST-V(112) dated 06.10.1994 under Madhya Pradesh Sthaniya Khstra Me Mal ke Pravesh Pare Kar Adhiniya, 1976</p> <p>Exemption granted to new industry including any such substantial expansion of an existing industry as may be approved by the Government (Pg. 472 of PB) with the object of promoting industrial development in the State by setting up of new industrial units within the State of Madhya Pradesh.</p> <p>Judgment relied upon by the Assessee wherein the subsidy received under the Entry tax exemption scheme of Madhya Pradesh has been held to be capital in nature is tabulated in a Chart attached herewith as</p>

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		<p><b>Annexure A.</b></p> <p>The highlighted portion in Department submissions clearly prove that subsidy was capped based on % of capital investment. Further, the Department has not pointed out any clause of the Scheme which suggests that Subsidy was to augment profits of the Company. In fact, the Scheme clearly provides for industrialisation (by granting benefits to new units or expansion of existing units) and in some cases, generation of employment and thus, applying purpose test, it be held that subsidy is a capital receipt.</p>
	<p><b><u>Aditya Cement, Unit of Grasim Industries Limited, Sales Tax Exemption</u></b></p> <p>The certificates and other documents filed during the course of set-aside proceedings <b>speak of the capital investment only for the purpose of computation/working of subsidy and not indicate the same as the sole criteria for eligibility for the benefit of scheme.</b></p>	<p>Sales Tax New Incentive Scheme for Industries 1989, Rajasthan (S.No.764 : F-4(35)FD Gr.IV/87-39 dated 6.7.1989)</p> <p>This Scheme exempts the industrial unit from payment of tax on the sales made in the course of inter-state trade or commerce of the goods including bye-products and waste items manufactured by them within the State and in case of packing material used therewith, the benefit is available only if it is linked with fixed capital investment (Pg. 481 of PB) with the object of promoting industrial development in the State of Rajasthan.</p> <p>Objective at Pg 489 (this does not appear to be scheme document but some commentary on the same) :- To boost up industrial development in the State the Government have enacted provisions for giving relief to the industries in some form or the other so as to assist them in their development, particularly during the initial period required by the industries to come to full maturity. (para 1.1 refers to industrial policy 1990, whereas, above scheme is of 1989)</p> <p>Judgments relied upon by the Assessee wherein the subsidy received under the Sales tax exemption scheme of Rajasthan has been held to be capital in nature is tabulated in a Chart attached herewith as</p>

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		<p><b>Annexure A.</b></p> <p>The highlighted portion in Department submissions clearly prove that subsidy was capped based on % of capital investment. Further, the Department has not pointed out any clause of the Scheme which suggests that Subsidy was to augment profits of the Company. In fact, the Scheme clearly provides for industrialisation (by granting benefits to new units or expansion of existing units) and in some cases, generation of employment and thus, applying purpose test, it be held that subsidy is a capital receipt.</p>
	<p><b><u>Vikram Woollens, Unit of Grasim Industries Limited, Sales Tax Exemption</u></b></p> <p>The certificates and other documents filed during the course of set-aside proceedings <b>speak of the capital investment only for the purpose of computation/working of subsidy and not indicate the same as the sole criteria for eligibility for the benefit of scheme</b></p>	<p><u>Notification no. A-3-24-94-ST-V(108) dated 6.10.1994 (Madhya Pradesh)</u></p> <p>Exemption granted to new industrial unit with a capital investment in fixed assets above specified limit (Pg. 492 to 494 of PB) with the object of promoting industrial development in the State by setting up of new industrial units within the State of Madhya Pradesh.</p> <p>Judgments relied upon by the Assessee wherein the subsidy received under the Sales tax exemption scheme of Madhya Pradesh has been held to be capital in nature is tabulated in a Chart attached herewith as <b>Annexure A.</b></p> <p>The highlighted portion in Department submissions clearly prove that subsidy was capped based on % of capital investment. Further, the Department has not pointed out any clause of the Scheme which suggests that Subsidy was to augment profits of the Company. In fact, the Scheme clearly provides for industrialisation (by granting benefits to new units or expansion of existing units) and in some cases, generation of employment and thus, applying purpose test, it be held that subsidy is a capital receipt.</p>
	<b><u>Grasim Cement, Unit</u></b>	<u>1991 Scheme for units with Capital Investment in</u>

	<p><b><u>of Grasim Industries Limited, Sales Tax Exemption</u></b></p> <p>The certificates and other documents filed during the course of set-aside proceedings <b>speak of the capital investment only for the purpose of computation/working of subsidy and not indicate the same as the sole criteria for eligibility for the benefit of scheme</b></p>	<p><u>fixed assets of Rs. 100 crore or more [Notification no. A-3-27-89-ST-V-(15) dated 19.02.1991 (Madhya Pradesh)]</u></p> <p>Exemption granted to eligible industrial unit established in any district in Madhya Pradesh with a capital investment in fixed assets of Rs. 100 crore or more (Pg. 517 to 518 of PB) with the object of accelerating pace of industrialisation in the State of Madhya Pradesh.</p> <p>Judgments relied upon by the Assessee wherein the subsidy received under the Sales tax exemption scheme of Madhya Pradesh has been held to be capital in nature is tabulated in a Chart attached herewith as <b>Annexure A.</b></p> <p>The highlighted portion in Department submissions clearly prove that subsidy was capped based on % of capital investment. Further, the Department has not pointed out any clause of the Scheme which suggests that Subsidy was to augment profits of the Company. In fact, the Scheme clearly provides for industrialisation (by granting benefits to new units or expansion of existing units) and in some cases, generation of employment and thus, applying purpose test, it be held that subsidy is a capital receipt.</p>
	<p><b><u>Elegant Spinners, Unit of Grasim Industries Limited, Sales Tax Exemption (AY 1997-98)</u></b></p> <p>As per the Assessee's submission for Assessment Year 1996-97, on perusal of the Scheme (Page nos.178-179) of the Assessee, it is seen that the exemption is provided in</p>	<p><u>Sales Tax Exemption Scheme (Haryana General Sales Tax Rules 1975)</u></p> <p>Exemption granted to eligible industrial unit being a new industrial unit or a unit undertaking expansion or diversification (Pg. 536 of PB) with the object of promoting investment in backward area.</p> <p>Judgments relied upon by the Assessee wherein the subsidy received under the Sales tax exemption scheme of Haryana has been held to be capital in nature is tabulated in a Chart attached herewith as</p>

	<p>respect of newly established industrial undertakings or expansion of existing industrial undertakings subject to fulfilment of capital investment and increase in annual production criteria mentioned therein.</p> <p><b>However, neither the scheme, nor the Eligibility Certificate provide the methodology for quantification of sales tax exemption vis-à-vis capital investment. Hence no exemption available, not being capital subsidy</b></p>	<p><b>Annexure A.</b></p> <p>The highlighted portion in Department submissions clearly prove that subsidy was capped based on % of capital investment. Further, the Department has not pointed out any clause of the Scheme which suggests that Subsidy was to augment profits of the Company. In fact, the Scheme clearly provides for industrialisation (by granting benefits to new units or expansion of existing units) and in some cases, generation of employment and thus, applying purpose test, it be held that subsidy is a capital receipt.</p>
<p>Para 24 / Pages 61 to 63</p>	<p>It is impossible to make out from the submissions of the assessee as to how they are relevant to the crucial issue for determination of the notional subsidy being of revenue or capital nature. The assessee has confused that any reference to investment in fixed assets for measuring the quantum of subsidy is same as investment in capital assets. It is a settled position of law that reference to investment in capital assets is only a measure for quantification of the</p>	<p>The Assessee has never stated that only because the incentive is linked to amount invested in capital asset, the incentive is capital receipt. The Assessee has always emphasized upon the purpose test.</p> <p>The Assessee has given all Scheme documents to AO. The CIT(A) has allowed the appeals and it is Department appeal to the Tribunal. It is for the Department to show from the Schemes that purpose of subsidy is to augment profits of the Company.</p> <p>The Assessee has never contended that all the Schemes are alike. The Assessee has submitted all the Schemes which have been considered by the AO and CIT(A). For brevity, the Assessee is attaching herewith Annexure A which lists down decisions of Tribunal where similar schemes of State Government (in the present case, Maharashtra, Haryana, Rajasthan and Madhya Pradesh) have been considered and Tribunal has held the subsidy/incentive/grant to be a capital receipt. In any event, neither the AO nor the DR while arguing his appeals have referred to specific</p>

	<p>subsidy and it does not lead to the inference that the subsidy is of capital nature;</p> <p>The assessee is making general submission treating all the schemes alike ignoring the observation on facts by the ITAT Special Bench in the case of Reliance Industries Ltd, that the schemes of Maharashtra are different from those of Madhy Pradesh and Andhra Pradesh. As directed by the Hon'ble Bombay High Court in assessee's own case cited in paragraph 5(ix) above, assessee was required to point out the specific clauses in each agreement pertaining to each assessment year instead of making generalized submission</p> <p>Without any assistance from the assessee, the Assessing Officer has faced imponderable difficulty in trying to make a sense out of the irrelevant submissions</p>	<p>scheme and pointed out that they are for augmenting the profits.</p>
<p>Para 25/Page 63 and 64</p>	<p>The assessee is diverting attention from facts by focussing on case laws. For example for each year it is relying on the</p>	<p>All five years, it is department appeal and hence if the grounds are defective then on that ground Department appeal should be dismissed.</p>

	<p>decision of the Special Bench in the case of Reliance Industries Lt. 88 ITD 273. The decision has created the controversial concept of notional subsidy. Then in some appeals the word notional is removed and they refer to sales tax subsidy. Several grounds of appeal mentioned in this order suffer from this defect</p> <p>The decision of the Special Bench in Reliance Industries Ltd. would create a dangerous trend and ought to be nipped in the bud. It is a wrong decision challenging the basic integrity of the Income-tax Act.</p>	<p>The Assessee has not merely relied on decision of Reliance Industries (SB). In fact it has also relied on other decisions of Supreme Court and other High Courts (Please refer legal submissions made before AO and CIT(A) at Page No. 761 to 785 of Paper Book 3 and Page No. 59 to 146 of the Paper Book 1 respectively);</p> <p>The Assessee submits that despite the Hon'ble Supreme Court directing the Bombay High Court to consider the question of law raised in Reliance Industries, the decision of Special Bench is subsisting and in force and binding on all benches of ITAT.</p>
<p>Para 26-39/Pages 64 to 97</p>	<p>Reliance is placed on decision of Supreme Court in <b><u>Sahney Steel and Press Works Ltd. v. CIT [1997] 228 ITR 253 (SC)</u></b></p> <p>Further reliance is placed on the following decisions which have followed the ratio laid down by Sahney Steels (supra):</p> <ul style="list-style-type: none"> <li>• CIT v. Dusad</li> </ul>	<p>Essentially, the Department has relied on decision of Supreme Court in Sahney Steel(supra). Other decisions cited by the Department are prior to decision of Supreme Court in Ponni Sugars (supra).</p> <p>The Department in its Written submissions at Page 64 (iv) has reproduced part of decision of Supreme Court in Sahney (supra) where it was held that the subsidies were given to encourage setting up of industries in State of Andhra Pradesh by making the business of production and sale of goods in the state more profitable". Thus, it appears that object of the Scheme in case before Sahney was to make industries more profitable.</p>

	<p>Industries [1986]162 ITR 784 (MP)</p> <ul style="list-style-type: none"> <li>• CIT v. Chhindwara Fuels [2000]245 ITR 9,(Cal)</li> <li>• CIT v. Rajaram Maize Products [1998] 234 ITR 667 (MP)</li> <li>• CIT v. Rajaram Maize Products [2001] 251 ITR 427 (SC)</li> <li>• V.S.S.V. Meenakshi Achi [1966] LXI ITR 253 (SC)</li> <li>• Merinoply and Chemicals Ltd. v, CIT [1994] 209 ITR 508 (Cal.)</li> <li>• CIT v. Godavari Plywood Ltd [1987] 168 ITR 632(AP)</li> <li>• CIT v. P J Chemicals Ltd. [1994]210 ITR 830 (SC)</li> <li>• K.C.P. Ltd.v. CIT [2001]245 ITR421 (GC)</li> <li>• Bajaj Auto Ltd. v. DCIT [2004] 90 ITD 153 (Mumai)</li> </ul>	<p>The Department has stressed on the fact that in Ponni Sugars, the Madras High Court held that subsidy linked to purchase tax was of revenue nature and same has not been challenged before the Supreme Court. It is submitted that firstly, the Madras High Court observed that terms of concession shows that concession was given to meet the cost of running the business after it has gone to production (In the present case, the Department has not pointed out any Scheme which proves that subsidy was for meeting cost of running the business). Secondly, the mere fact that in Ponni, the said question was not challenged before Supreme Court cannot lead to conclusion that any incentives after commencement are of revenue nature.</p> <p>The Supreme Court in Ponni Sugars (supra) after considering the decision of Sahney held that the only relevant test for identifying whether a subsidy is capital in nature or revenue is its Object i.e. if the object is to set up a new unit of expansion of existing unit then it is revenue in nature but if it is to augment profits then it is revenue in nature. The relevant para of the said decision is reproduced below:</p> <p><i>“That test is that the character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases, one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. The source is immaterial. The form of subsidy is immaterial. The main eligibility condition in the scheme with which we are concerned in this case is that the incentive must be utilized for repayment of loans taken by the assessee to set up new units or for substantial expansion of existing units. On this aspect there is no dispute. If the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit</i></p>
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		<p><i>then the receipt of the subsidy was on capital account. Therefore, it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form of the mechanism through which the subsidy is given is irrelevant.”</i></p> <p>Lastly, the DR has wrongly observed that even before Supreme Court in Ponni, the Supreme Court solely decided in favour as the subsidy was only for repayment of loan. The exact same argument was taken in case of M/s. Jindal Steel &amp; Power Ltd. (ITA No. 167/Del/2009), however, the Tribunal rejected the same at Paras 36 to 38 and ultimately following decision of Balaji Alloys (supra) and Chaphalkar (supra) decided in favour and held at Para 43 that subsidy received under the Madhya Pradesh scheme is a capital receipt. Copy of the decision in case of Jindal Steel (supra) is attached herewith as Annexure B.</p> <p>The subsequent decisions of High Court and Supreme Court have consistency applied the following tests, ignoring the form, <u>time</u> and source of subsidy:</p> <ul style="list-style-type: none"> <li>• Shree Balaji Alloys (J &amp; K HC) (supra) affirmed by Hon’ble SC (supra)</li> <li>• Chaphalkar Brothers (SC) (supra)</li> <li>• Munjal Auto (Guj), SLP Dismissed(supra)</li> <li>• PCIT v. Welspun Steel Ltd. (103 taxmann.com 436) (Bom HC) (PB 4, Pg. No. 1012-1017)</li> <li>• PCIT v. Capgemini India P. Ltd. (90 taxmann.com 409) (Bom HC) (PB 4, Pg No. 1018-1020)</li> <li>• CIT v. Indian Petrochemicals Corpn. Ltd. (102 taxmann.com 181) (Bom HC) (PB 4, Pg No. 1164-1166)</li> <li>• CIT v. Nirma Ltd. (88 taxmann.com 481) (Guj) (PB 4, Pg. No. 837-840)</li> <li>• CIT v. Rasoi Ltd. (245 CTR 667) (Calcutta HC)</li> </ul> <p>Lastly, the DR relied on the fact that decision in case of Dusad Industries (MP) (supra) was relied before AO and which has been overruled by decision in case of Sahney Steel (supra). The Assessee submits as evident from 143(3) order of AY 98-99, the AO at Para 5.4 held that facts of Dusad (supra) and in the present case is different. If facts are different then the question of commenting on Dusad does not arise.</p>
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		<p>In any event, post Chaphalkar (supra) various Tribunals have in context of incentive under 1994 and recent schemes of MP, decided in favour and held subsidy to be capital receipt.</p> <p>Moreover, before the Hon'ble Tribunal, presently the Assessee has neither cited nor relied on Dusad Industries (supra).</p>
Page 97/98	<p><b><u>II. ISSUE -WHETHER CAPITAL SUBSIDY SHOULD BE DEDUCTED FROM THE ACTUAL COST FOR THE PURPOSE OF CALCULATION OF DEPRECIATION</u></b></p> <p><b>40.</b> The common ground of appeal on this issue is as under:</p> <p><i>“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not allowing the cost of the Block of Assets to be reduced by amount of subsidy treated as capital receipt in view of Explanation 10 to section 43(1) of the I.T. Act.”</i></p> <p>This ground will arise in case the subsidy is held to be capital receipt. The ground is self-explanatory. Particularly from</p>	<p>The sales tax exemption received by the Assessee has not been granted for any specific plant or machinery but to encourage industrial development.</p> <p>Firstly, explanation 10 to section 43(1) has been inserted by Finance Act (No. 2), 1998 w.e.f. April 1, 1999, hence the question of applying Explanation 10 would not arise for AY 96-97 to 98-99.</p> <p>In any event, reliance is placed on the following judicial pronouncements wherein after considering the provisions of explanation 10 to section 43(1) as well as the decision of Hon'ble SC in the case of P.J. Chemicals (210 ITR 830), it was held that sales tax incentive cannot be reduced from the cost of capital investment as the percentage of capital investment is only a mode of quantification of subsidy and not a payment to meet any portion of the 'actual cost':</p> <ul style="list-style-type: none"> <li>• PCIT v. Welspun Steel Ltd. (103 taxmann.com 436) (Bom HC) (PB 4 pg. 1012-1017)</li> <li>• Nestle India Ltd v. DCIT (1954/Del/2014) (PB 4 pg. 1089-1115)</li> <li>• CIT v. Rasoi Ltd. (46 taxmann.com 214) (Kol T)</li> <li>• Sasisri Extractions Ltd. v. ACIT (122 ITD 428) (Vizac T) (PB 1 Pg. No. 364-367)</li> </ul>

	<p>the assessment year 1999-2000 when the Explanation 10 was inserted in section 43(1), the law is clear that the subsidy will be reduced from the actual cost for the purpose of calculating depreciation.</p> <p>Further as explained while discussing the Supreme Court decision the case of P.J. Chemicals Ltd. (supra), not deducting the so called notional subsidy while calculating the depreciation has weakened the main case of claiming exemption of notional subsidy from taxation.</p>	
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5.1. Further the Id. AR also filed yet another rejoinder to the oral submissions made by the Id. Special Counsel for the Revenue as under:-

**I: Ground (i) and (ii):**

Sr. No.	DR's Arguments	Assessee's Submissions
1.	<p>The Assessee had filed its original return for above years and included the sales as trading receipt following decision of Chowringhee Sales Bureau v. CIT (87 ITR 542) (SC) and Sinclair Murray and Co. Pvt. Ltd. v. CIT (97 ITR 615) (SC). The AO completed assessment by making certain other additions/disallowances.</p> <p>Only after 10 years, the Assessee choose to file additional ground before the Tribunal to claim that subsidy/incentive/grants/etc received under various Schemes/Notifications of State Governments are capital receipt not chargeable to tax and thereby sought to seek refund of taxes suo moto paid by the Assessee</p>	<p>The Assessee does not dispute that the claim of subsidies/incentives being capital receipt was first time raised before the Tribunal.</p> <p>The claim was based on the decision of Hon'ble Special Bench Mumbai Tribunal in the case of DCIT v. Reliance Industries Ltd. (88 ITD 273) (PB 1, Pg No. 217-232). However, post the said decisions, consistently, the Supreme Court, High Court and ITAT have been holding that subsidy received as a result of setting up of units or industrialisation of backward area is a capital receipt. If Supreme Court also has rendered numerous decisions to the said effect, it means that no tax was leviable on such subsidy/incentive.</p> <p>It is a settled law that Department cannot levy any taxes without the authority of law. Reliance is placed on the decision of Hon'ble Bom HC in the case of Balmukund Acharya v. DCIT (310 ITR 310) and Article 265 of the Constitution of India. Thus, the Assessee was at full liberty to file additional ground for seeking refund of taxes on such subsidy.</p> <p>If such subsidies/incentives are capital receipt and not chargeable to tax, the fact that claim is raised before Tribunal for the first time should not be relevant.</p>

Sr. No.	DR's Arguments	Assessee's Submissions
2.	<p>The ITAT in first round wrongly admitted the additional ground raised by the Assessee. The decision of Reliance Special Bench (supra) has been found to be erroneous by the Supreme Court and hence, the entire act of admitting additional ground by ITAT is wrong. Reliance Special Bench (supra) decision is fallacious and wrong and perverse on various grounds.</p>	<p>The Assessee submits that if Department had any grievance against the order of ITAT admitting additional ground, it should have challenged the same before the High Court.</p> <p>The Department did not challenge this action of Tribunal for AY 1996-97 &amp; 1997-98 and AY 1998-99 and where it did for AY 99-00 &amp; 00-01, the HC dismissed the same. Against the same to best of our knowledge, no SLP has been filed. (Refer Page 1168 of Paper Book 5). Once the Department has not challenged and the issue on admission of additional ground has become final, it is not open for Department to now raise this issue in the present proceedings.</p>
3.	<p>The AO and CIT(A) have not followed the direction of the Tribunal. The AO has not examined any facts/schemes/amount of claim. The CIT(A) has passed mechanical orders. There is no proper discussion by the AO and CIT(A)</p>	<p>The Assessee submits that the ITAT in each of the five years had directed AO to examine the issue after affording opportunity to the Assessee. Thus, the ITAT had not issued any directives to the CIT(A).</p> <p>At Para 4 of AO's order u/s.143(3) r.w.s. 254 (AY 1996-97), the AO notes that during the assessment proceedings, relevant details have been called for. Assessee submitted the details and explained the same. It may also be noted that during the course of proceedings u/s 143(3) r.w.s. 254, the AO had called for documentary evidences to substantiate the claim of sales tax subsidies/incentives (PB 3, Pg. No. 786) to which the Assessee had duly complied with (See for eg:- PB 1, Pg 31-33 for AY 96-97).</p> <p><b>The AO has discussed this issue at Para 7 and observed as under:</b> Para 7.1: Records Assessee's submissions that scheme were framed for necessary infrastructure in backward/notified area and hence incentive is capital in nature. Reliance is placed on the decision of Reliance Industries SB (supra).</p> <p>Holds that decision of Hon'ble Bombay High Court against Special Bench decision has been set aside by Hon'ble Supreme Court in the</p>

Sr. No.	DR's Arguments	Assessee's Submissions
		<p>case of CIT vs Reliance Industries Limited (Civil Appeal No 7769 of 2011) (PB 1, Pg. No. 243-244) back to Hon'ble Bombay High Court for fresh adjudication and hence it is clear that issue has not been settled by Apex Court till date.</p> <p>Para 7.2: Holds sales tax incentive is nothing but revenue received. Alternatively, since incentive received is on basis of investments made in Fixed Assets, it is to be reduced from WDV of assets. Thus, this clearly shows that he has examined the Schemes/Notifications/other documents and only then concluded that incentive is on revenue account.</p> <p>Para 7.3: Holds that Assessee's reliance on AY 1995-96, OGE to ITAT wherein such incentive is held to be capital receipt as also CIT(A) order for AY 2006-07 to AY 2008-09 cannot be relied as principle of res judicata does not apply to income tax proceedings.</p> <p>Para 7.4: Holds that other decisions relied by Assessee cannot apply. Also holds that since in Return of Income no claim was made, relying on Goetze India Limited (SC), claim cannot be allowed.</p> <p>Submissions:</p> <ol style="list-style-type: none"> <li>17. All details called for were submitted and explained by the Assessee;</li> <li>18. For AY 1996-97, please see Letter dated September 27, 2012 at Page 26, 28 of Paper Book 1;</li> <li>19. For AY 1996-97, please see Letter dated August 28, 2012 at Page 30 of Paper Book 1;</li> <li>20. For AY 1996-97, please see letter dated September 27, 2013 at Page 31 of Paper Book 1;</li> <li>21. Please see Annexure A &amp; B referred to in letters dated August 28, 2012 &amp; September 27, 2013 at Page No 33 to 36 Paper Book 1. Similar details were submitted for subsequent assessment years also (please refer Page No. 37 to 58 of Paper Book 1). Thus, details of Scheme, exemptions claimed, year-wise and scheme wise documents all submitted to AO;</li> <li>22. Please see legal submission filed before AO at Page 761 to 785 of PB 3.</li> <li>23. Thus, clearly entire directive of ITAT of examining facts including scheme, purpose and sales tax order/notifications all have been submitted. Unlike the amount referred to in additional ground before ITAT, the AO refers to exact amount claimed by the Assessee in set aside proceedings.</li> <li>24. Entire written submissions before CIT(A) in second round is from Page 59 to 146 of Paper Book 1;</li> <li>25. It is a settled law by Hon'ble Supreme Court and Hon'ble</li> </ol>

Sr. No.	DR's Arguments	Assessee's Submissions						
		<p>Bombay High Court that once entire details have been furnished before AO, how the AO writes the order is not in control of the Assessee and merely because there is no discussion in order, it cannot be inferred that AO has not passed a speaking order. See following decisions:</p> <table border="1" data-bbox="555 600 1410 958"> <tr> <td data-bbox="555 600 1410 689">Marico Ltd. v. ACIT (111 taxmann.com 253) (Bom HC)</td> </tr> <tr> <td data-bbox="555 689 1410 734">ACIT v. Marico Ltd. (117 taxmann.com 244) (SLP Dismissed)</td> </tr> <tr> <td data-bbox="555 734 1410 779">Idea Cellular Ltd. v. DCIT (301 ITR 407) (Bom HC) (PB 7, Page</td> </tr> <tr> <td data-bbox="555 779 1410 869">GKN Sinter Metals Ltd. v. ACIT (371 ITR 225) (Bom HC) (PB 7 Page 1393)</td> </tr> <tr> <td data-bbox="555 869 1410 913">Aroni Commercials Ltd. v. ACIT (367 ITR 405) (Bom HC)</td> </tr> <tr> <td data-bbox="555 913 1410 958">CIT v. Prima Paper And Engineering Industry (364 ITR 222) (Bo</td> </tr> </table> <p>26. The Appellant had relied on decisions like Special Bench in Reliance Industries (supra), Bombay High Court decision in case of Reliance Industries (which now has only been set aside to Bombay High Court by Apex Court for framing a question of law), decision of Hon'ble Supreme Court in the case of CIT v. Ponni Sugars &amp; Chemicals Ltd. (306 ITR 392 (SC) (PB1, Pg. no. 233-238)</p> <p>27. The AO only states that decision of Bombay High Court is set aside by SC and thus issue not settled by Supreme Court. Thus, he does not dispute that decision of Special Bench is still a good law.</p> <p>28. Once ITAT has restored the issue to AO, question of Goetz (India) Ltd. vs. CIT (284 ITR 323) (SC) does not arise. In any event, even as per Goetz (supra), appellate authorities can always admit a new claim, which ITAT admitted and hence in present proceedings the AO cannot have any grievance on the same. In any event as stated in rebuttal above, those ITAT orders have become final.</p> <p>29. The CIT(A) has passed a detailed order. The discussion on this issue starts from Page 4 to 12/Para 3.</p> <p>30. The CIT(A) at bottom of Page 9 notes that the Appellant has filed details of all the incentive schemes including notifications of the State Government. Also holds that that applying purpose test as canvassed by Supreme Court in Ponni Sugars (supra) holds subsidy to be a capital receipt;</p> <p>31. At Para 3.3.3. at Page 10, holds that despite the Hon'ble</p>	Marico Ltd. v. ACIT (111 taxmann.com 253) (Bom HC)	ACIT v. Marico Ltd. (117 taxmann.com 244) (SLP Dismissed)	Idea Cellular Ltd. v. DCIT (301 ITR 407) (Bom HC) (PB 7, Page	GKN Sinter Metals Ltd. v. ACIT (371 ITR 225) (Bom HC) (PB 7 Page 1393)	Aroni Commercials Ltd. v. ACIT (367 ITR 405) (Bom HC)	CIT v. Prima Paper And Engineering Industry (364 ITR 222) (Bo
Marico Ltd. v. ACIT (111 taxmann.com 253) (Bom HC)								
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GKN Sinter Metals Ltd. v. ACIT (371 ITR 225) (Bom HC) (PB 7 Page 1393)								
Aroni Commercials Ltd. v. ACIT (367 ITR 405) (Bom HC)								
CIT v. Prima Paper And Engineering Industry (364 ITR 222) (Bo								

Sr. No.	DR's Arguments	Assessee's Submissions
		<p>Supreme Court (supra) setting aside Bombay High Court decision in Reliance Industries' case, the ITAT Special Bench decision (supra) continues.</p> <p>32. Reliance is placed on decisions referred above for the proposition that once material is before CIT(A), he has considered the same, then merely because order is not written in manner expected by the DR, it cannot be said that there is no application of mind by the CIT(A).</p> <p>The Assessee submits that all factual documents like Schemes/Notification/Eligibility Certificates/Sales Tax Orders&gt;Returns/etc. all are also filed before the Tribunal and if Department has not disputed the same specifically, it is submitted that order of CIT(A) cannot be reversed.</p>
4.	<p><b><u>Quantification</u></b></p> <ul style="list-style-type: none"> <li>• Sales tax assessment orders were not available at the time of filing ROI.</li> <li>• Highlights sales tax assessment orders at Pg. No. 554-559 for AY 96-97, Pg. No. 660-662 for AY 98-99, Pg. No. 676-679 for AY 99-00, Pg. No. 709-711 for AY 00-01 of FPB 2 to prove the same</li> <li>• The figures of subsidy have changed. See grounds before ITAT and relief now allowed by the</li> </ul>	<p>The Assessee had raised the additional ground before the Tribunal, which was admitted and send back to the Assessing Officer. The fact that amount mentioned in those ground and as finally determined by the AO may be different as the figures taken in additional ground were an estimate. No relief has been given based on amounts taken in additional grounds. In fact, the AO and CIT(A) have based on actual documents now quantified the amount of subsidy. The AO firstly determined the amount while passing order u/s.143(3) r.w.s. 254. Again, post CIT(A) order also, he passed OGE to CIT(A) and reconfirmed the amount of exemption.</p> <p>Page 1167 of Paper Book 4 summarise total subsidy for each year and also give reference to relevant schemes and pages of Paper Book. For specimen basis, for AY 1996-97, chart is separately given during the course of hearing on April 7, 2022 where the aggregate amount of subsidy in each state and relevant returns/assessment orders are matched with document in Paper Book.</p> <p>Also, if AO and CIT(A) have examined and analysed the factual documents, the matter cannot be remitted to AO for re verification. Reliance is placed on Hon'ble Jurisdictional Tribunal decision of Prism Cement Ltd. v. DCIT (ITA No. 804 &amp; 805/Mum/2018) (PB 7 Para 42 at Page 1305/06)</p> <p>The Assessee submits that the sales tax/purchase tax/entry tax department or the State Government or its implementing agencies/monitoring agencies have to determine the incentive/subsidy</p>

Sr. No.	DR's Arguments	Assessee's Submissions
	<p>CIT(A). The Assessee has not explained the difference in amounts.</p> <ul style="list-style-type: none"> <li>• The amount of sales tax incentive/subsidy may be changed by the respective authorities, how would income tax department keep track of the same. The Tax Department are not trained in sales tax and expert in those laws.</li> <li>• The Assessee has not maintained separate account, how the subsidy is accounted, utilized, etc.</li> <li>• AO cannot be expected to do something that is impossible to do, relies upon the decision of Hon'ble Supreme Court in the case of CIT Bangalore v. B.C. Srinivasa Shetty (128 ITR 294) (DR</li> </ul>	<p>based on Schemes and Notification of the State Government. The returns filed/assessment orders have already been placed on record.</p> <p>It is undisputed by above authorities that Assessee was entitled to subsidy/incentives. Infact, since the Assessee has received the said subsidies/incentives, the only question of whether it is capital receipt or revenue receipt arises.</p> <p>The Assessee on specimen basis had referred to PB 2, Pg. 400 where in so far as Maharashtra Scheme is concerned, SICOM being the implementing agency, had listed various conditions to be complied with including accounting, utilisation etc. It is thus submitted that it is only the domain of the respective agencies to examine conditions that they have been listed down and the fact that the Assessee has received the subsidies/incentives, it implies that the respective conditions have been satisfied and there are no adverse observations by those agencies.</p> <p>Thus, the DR cannot question any aspects as to whether Assessee complied with conditions, whether it maintained separate accounts, etc. All those facets are examined by respective authorities. Further, neither the AO nor the CIT(A) has made any adverse comments on the documents filed by the Assessee including schemes, notifications, eligibility certificates etc.</p> <p>The Assessee has quantified the subsidy/incentives based on the factual documents and based on relevant orders of authorities or based on returns filed.</p> <p>Assuming that the higher amount of sales tax is determined, it would increase amount of exemption in a particular year and correspondingly reduce exemption in subsequent year. However, whatever change happens, once Assessee is entitled to an incentive, the outer limit is fixed and no incentive beyond that can be allowed by the respective authorities. Thus, at worst, it could be timing difference.</p> <p>On facts, the decision of B.C. Srinivasa Shetty (supra) is not applicable</p>

Sr. No.	DR's Arguments	Assessee's Submissions
	<p>PB Pg. no. 150-157)</p>	
	<ul style="list-style-type: none"> <li>A's Maharashtra scheme provides for merely shifting existing units from Mumbai-Pune-Thane belt to backward areas which cannot amount to industrialisation. The said scheme is for shifting and not for setting up new units.</li> </ul>	<p>The DR has relied only on the Maharashtra Scheme for said allegation. However, it is submitted that said allegation is baseless. Infact, the Maharashtra scheme clearly specifies that even a new unit can claim sales tax exemption. See FPB 2 Pg No. 373/376</p>
	<p><b>Commencement:</b></p> <ul style="list-style-type: none"> <li>Period when subsidy received is relevant. If subsidy is received with reference to sales tax/purchase tax/etc, clearly it is post commencement of business, hence revenue in nature</li> <li>Reliance was placed on Hon'ble Supreme Court in case of Sahney Steel &amp; Press Works Ltd. v. CIT</li> </ul>	<p>It has been settled by Hon'ble Supreme Court in case of Ponni Sugars (supra) that the form/mechanism of computing subsidy is irrelevant and merely because subsidy is granted post commencement of production, does not mean it is to augment profits. Further reliance is placed on the following judicial precedents wherein the subsidy received was held to be capital in nature even when received post commencement of production:</p> <ul style="list-style-type: none"> <li>CIT v. Ponni Sugars &amp; Chemicals Ltd. (Supra)</li> <li>Shree Balaji Alloys v. CIT (J&amp;K HC) (333 ITR 335) [PB 1 Pg. no. 276-284] Affirmed by SC (80 taxmann.com 239) [PB 1 Pg. no. 239-240]</li> <li>DCIT v. Munjal Auto Industries Ltd (Guj) (Tax Appeal No. 450 with 451 to 453 of 2012) (PB 4 Pg. no. 825-836) {SLP dismissed by SC (Civil Appeal No. 6226/2013) (PB 4 Pg. no. 822-824)}</li> <li>CIT v. Chaphalkar Brothers (252 Taxman 360) (SC) (PB4 Pg. No. 809-817) (Para 9 and 22)</li> <li>MAN Industries India Ltd v. ACIT v. ACIT (ITA No. 6696, 6697 &amp; 6698/MUM/2014) (PB 1 Pg. no. 322-350)</li> <li>Mahindra &amp; Mahindra Ltd. v. DCIT (7382/Mum/2017) (PB 1 Pg. no. 1021-1079)</li> <li>Grasim Industries Ltd. (Successor to Aditya Birla Nuvo Limited) v. ACIT (ITA No. 7062/M/2014) (Mum.) [PB4 Pg.</li> </ul>

Sr. No.	DR's Arguments	Assessee's Submissions
	(228 ITR 253) (SC) [DR PB Pg. No. 158-173] anything before commencement is capital, after commencement is revenue.	No. 841-863]
	<p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>• If subsidy is given for acquiring a capital asset then it's a capital subsidy, if it is for supplementing profits then it's a revenue subsidy</li> <li>• If it is to enable running of business, subsidy is revenue even if it is used to establish units in backward areas. Clearly sales tax subsidy is to enable running of business, since purchase, sales and entry tax are all after commencement. Relies upon Hon'ble High Court in case of Kesoram Industries &amp; Cotton Mills Ltd. v. CIT (191 ITR 518)</li> </ul>	<p>It has been settled by Hon'ble HCs after considering Sahney Steel(Supra) , Ponni Sugars (supra) and Chaphalkar Brothers (supra) that where the object of the subsidy is to for development of state and setting up of industries in backward areas it is capital in nature and where it is to augment profits, it is a revenue subsidy. Few such decisions are as under:</p> <ul style="list-style-type: none"> <li>• PCIT v. Ankit Metal &amp; Power Ltd. (Cal. HC) (416 ITR 591) (PB7 Pg. no. 1367-1374)</li> <li>• PCIT v. Shyam Steel Industries Ltd. (Cal. HC) (303 CTR 628) (PB7 Pg. no. 1375-1377)</li> </ul> <p>The Jurisdictional HC in CIT v. Kirloskar Oil Engines Ltd. (364 ITR 88) (Pg 245-247/PB 1) after referring to both the decisions of Sahney Steel (supra) and Ponni Sugars (supra) has held that <i>"If the object of the subsidy scheme is to enable the assessee to run the business more profitably then the receipt is on the revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the Assessee to set up a new unit then the receipt of subsidy was on the capital account."</i></p> <p>The DR has not referred to any specific schemes filed in the Paper Book to point out any clauses of the scheme which prove that scheme was for supplementing profits. The Schemes provide that the subsidy is for encouraging growth, industrialisation, employment and in some cases, dispersal of industries.</p> <p>The decision of Hon'ble High Court in case of Kesoram (supra) was relied upon by DR, but despite the same the Hon'ble Tribunal in the case of DCIT v. Indo Rama Textiles Ltd (25 taxmann.com 161) (Del. Trib.) (PB 4 Pg no. 1116-1120) held that sales tax subsidy is a capital receipt as Kesoram (supra) was prior to recent SC decision.</p> <p>The Assessee submits that the total subsidy receivable is based on % of capital/fixed asset investments made. Thus, the outer limit is quantified. Thus, under the sales tax/purchase tax laws etc, the total</p>

Sr. No.	DR's Arguments	Assessee's Submissions
	<p>(Cal HC) (DR PB Pg. No. 133-147)</p> <ul style="list-style-type: none"> <li>• If subsidy was a fixed sum, the matter would have been different. % of capital investment provided in the schemes is only a measure of calculation</li> <li>• Assessee has dumped 2000 pages which are not relevant.</li> </ul>	<p>amount of subsidy would not change. Based on assessments, etc only amounts in some years may change but the outer limit fixed based on capital investment would always remain the same.</p> <p>The Paper books contain all factual details including schemes/notifications/returns/assessment order under sales tax etc. The Assessee submits the same are relevant.</p>
5	<p>Since Assessee is claiming exemption from direct tax, strict interpretation has to be applied. Assessee has to substantiate that it has satisfied all conditions for getting the subsidy from the State. Reliance was placed on decision of Hon'ble Supreme Court in case of Novopan India Ltd. Hyderabad v. CCEC {Supp (3), Supreme Court Cases, 606} (DR PB Pg. no. 123-132) and CC (Import) v. M/s. Dilip Kumar &amp; Company &amp; Ors. (Civil Appeal No.</p>	<p>The Assessee submits that the claim of exemption from tax raised by the Assessee and allowed by the CIT(A) is on the ground that subsidy being capital receipt is not chargeable to tax u/s. 4. The Supreme Court, High Court and ITAT have consistently held that subsidy for industrialisation or for setting up industry in backward area or generating employment is capital receipt.</p> <p>The Assessee is not claiming deduction under section 80IA/80IB etc. which specifies conditions to be complied with. In present case the incentive was given by State Government and if relevant authorities of State Government which implement or monitor the Schemes, have granted incentive, for present appeal, only relevant issue is, based on purpose test whether it is capital or revenue. Thus, reliance on decisions of Hon'ble apex court decisions in case of Novopan (supra) and M/s. Dilip Kumar (Supra) is misplaced.</p>

Sr. No.	DR's Arguments	Assessee's Submissions
	3327 of 2007)	
6	<p><b><u>DCIT v. Reliance Industries Ltd. (88 ITD 273 (Mum) (SB) (PB 1 Pg. No. 217-232) decision is perverse</u></b></p> <ul style="list-style-type: none"> <li>• Hon'ble SC has set aside the SB decision to Hon'ble Bom HC and hence the same is not a good law.</li> <li>• The Hon'ble Tribunal did not look into aspects like whether subsidy a/c maintained, utilisation, it is poorly drafted;</li> <li>• Order of Reliance (SB) is perverse;</li> <li>• Made various allegation on manner in which Reliance (SB) was decided, etc;</li> <li>• In Assessee's own case, the Tribunal has not followed Reliance (SB), See PB 4 (Page 841 onwards)</li> </ul>	<p>After considering the Hon'ble SC (PB 1 Pg. no. 243-244) setting aside to Hon'ble Bom HC, Hon'ble Mumbai Tribunal SB decision in the case of Reliance Industries Ltd (supra) has been still held to be binding, valid and subsisting in the Assessee's own case for AY 2001-02 (ITA No. 778 of 2015) by Hon'ble Bombay High Court which is the Jurisdictional HC (SLP dismissed).</p> <p>Further, various Tribunals have consistently taken a view that post Supreme court also, the decision of Reliance (SB) is binding and subsisting; ACIT v. Genus Electrotech Ltd (71 taxmann.com 101) (Ahm. T) (PB 4 Pg. no. 801-808) Welspun India Ltd. v. DCIT (104 taxmann.com 267) (Mum T) affirmed by Hon'ble Bombay High Court in the case of PCIT v. Welspun Steel Ltd. (103 taxmann.com 436) (PB 4, Pg. No. 1012-1017).</p> <p>Further it has been held by Hon'ble Bom HC in the case of ITO v. Universal Ferro &amp; Allied Chemicals Ltd (172 ITR 30) (PB 7 Pg. no. 1378-1383, specifically Para 7) that once the Special Bench of the Tribunal records the decision after considering the judgement given by the High Court, then the decision of the Special Bench is binding on all other authorities subordinate to the Tribunal.</p> <p>In any event, to best of our knowledge, the decision of Reliance (SB) (supra) itself has not been challenged before Bombay High Court. It is for Department to demonstrate that very same decision of SB is challenged and pending before Bombay High Court.</p> <p>In our view, the Reliance Special Bench has passed a detailed order after considering the preamble of the scheme as also various decisions including those of Supreme Court and hence, same cannot be ignored.</p> <p>Lastly, the ITAT in Appellant's own case (as successor to Aditya Birla Nuvo Limited) (PB 4, Pg 852) has never held or observed anything contrary to Reliance (SB), but decided to apply purpose test as held by Ponni Sugars (supra) and decided in favour independently of Reliance SB by holding that VAT incentive under UP State Government Scheme is a capital receipt</p>
7	<b><u>Incentive v.</u></b>	The amendment to section 2(24)(xviii) which is made effective from

Sr. No.	DR's Arguments	Assessee's Submissions
	<p><b><u>Subsidy</u></b></p> <p>The Assessee has merely received an incentive and not a subsidy. Sales tax exemption is only a so-called notional subsidy. There is difference between an incentive, a subsidy and there is nothing like notional subsidy.</p>	<p>April 1, 2016 whereby subsidy has been held to be taxable also uses the term "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)"</p> <p>Thus, even legislation has not made any distinction between the term Subsidy or Incentive etc.</p> <p>Further, in so far as Maharashtra Scheme is concerned, the Scheme itself defines and explains what is a "notional" sales tax liability (NSTL) (PB 2/Page 376). In present case, the NSTL is also quantified by sales tax officer (PB 2/Page 553).</p> <p>Various Hon'ble Tribunals have either only used the term incentive or the term subsidy/incentive interchangeably and held the same to be capital in nature. Please See:</p> <ul style="list-style-type: none"> <li>- DCIT v. Reliance Industries Ltd. (88 ITD 273) (Mum SB) (PB 1 Pg. no. 217-232)</li> <li>- CIT v. Ponni Sugars &amp; Chemicals Ltd. (supra)</li> <li>- Shree Balaji Alloys v. CIT (333 ITR 335) (J &amp; K HC) (PB 1 Pg. no. 274-284) affirmed by SC in CIT v. Shree Balaji Alloys (80 taxmann.com 239) (PB 1 Pg. no. 239 - 240)</li> <li>- MAN Industries India Limited vs ACIT (ITA No. 6696, 6697 &amp; 6698/Mum/2014) (PB 1 Pg. no. 322-350)</li> <li>- ACIT vs Economic Explosive Limited (ITA 202 to 206/Nag/2015) (PB 1 Pg. no. 351-354)</li> <li>- Grasim Industries Ltd. (Successor to Aditya Birla Nuvo Limited) v. ACIT (ITA No. 7062/M/2014) (Mum.) (PB 4 Pg.no. 841-863)</li> <li>- Mahindra &amp; Mahindra Ltd. v. DCIT (7382/Mum/2017) (Mum.) (PB 4 Pg.no. 1021-1079)</li> <li>- Birla Corporation Ltd. v. DCIT (55 taxmann.com 33) (Kol.) (PB 4 Pg. no. 1128 - 1145)</li> </ul> <p>The Assessee submits that sales tax exemption received by it is a capital receipt without having regard to the terminology used i.e. Subsidy or incentive.</p>
<p><b>II</b></p>	<p><b>Subsidy should be reduced from cost of capital asset in view of explanation 10 to section 43(1)</b></p>	<p>The sales tax exemption received by the Assessee has not been granted for any specific asset but to encourage industrial development.</p> <p>Reliance is placed on the following judicial pronouncements wherein after considering the provisions of explanation 10 to section 43(1) as well as the decision of Hon'ble SC in the case of P.J. Chemicals (210 ITR 830), it was held that sales tax incentive cannot be reduced from the cost of capital investment as the percentage of capital investment is only a mode of quantification of subsidy and not a payment to meet any</p>

Sr. No.	DR's Arguments	Assessee's Submissions
		portion of the 'actual cost': <ul style="list-style-type: none"> <li>• PCIT v. Welspun Steel Ltd. (103 taxmann.com 436) (Bom HC) (PB 4 pg. 1012-1017)</li> <li>• Nestle India Ltd v. DCIT (1954/Del/2014) (PB 4 pg. 1089-1115)</li> <li>• CIT v. Rasoi Ltd. (46 taxmann.com 214) (Kol T)</li> <li>• Sasisri Extractions Ltd. v. ACIT (122 ITD 428) (Vizac T) (PB 1 Pg. No. 364-367)</li> </ul>
	<b>Additional grounds</b>	Additional Grounds 1 to 8 filed by the Revenue are argumentative in nature and pure facets of Department's various arguments to support its original grounds. Assessee has already responded to those arguments above and in Annexure 1.

5.2. From the aforesaid table, it is very clear that the assessee had furnished all the requisite documents to justify its claim of exemption that the subsidy received by it are capital receipts not chargeable to tax, before the Id. AO as well as before the Id. CIT(A) and that both the lower authorities had examined the very same documents and had arrived at their respective conscious conclusions. Hence the argument advanced by the Id. Special Counsel for the Revenue that both the lower authorities had not followed the directions of this Tribunal in the first round of proceedings wherein this Tribunal had directed the Id. AO to make thorough examination of the various subsidy / incentive schemes and decide its taxability. is completely devoid of merits. Since the matter has been already examined by both the lower authorities and respective conclusions drawn thereon by them , though contrary to each other, we hold that there is no need for these appeals to be remitted back to the file of Id. AO for denovo adjudication, as prayed by the Id. Special Counsel for the Revenue.