HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 35 of 2015

M/s P. S. Steel Tubes Pvt. Ltd. 27- Akashganga, Supela, Bhilai, District - Durg (Chhattisgarh)

---- Appellant

Versus

1. Income - Tax Appellate Tribunal Through - Assistant Registrar, Raipur Bench, Raipur (Chhattisgarh)
2. The Deputy Commissioner Of Income - Tax - 1 (1), Bunglow No. 32/32, Opp. Central Excise Building, Amdi Nagar, H U D C O, Bhilai, District Durg (Chhattisgarh)

----Respondents

Tax Case No. 36 of 2015

M/s P. S. Steel Tubes Pvt. Ltd. 27- Akashganga, Supela, Bhilai, District - Durg (Chhattisgarh)

---- Appellant

Versus

1. Income - Tax Appellate Tribunal Through - Assistant Registrar, Raipur Bench, Raipur (Chhattisgarh)
2. The Deputy Commissioner Of Income - Tax - 1 (1), Bunglow No. 32/32, Opp. Central Excise Building, Amdi Nagar, H U D C O, Bhilai, District Durg (Chhattisgarh)

----Respondents

Tax Case No. 37 of 2015

M/s P. S. Steel Tubes Pvt. Ltd. 27- Akashganga, Supela, Bhilai, District - Durg (Chhattisgarh)

---- Appellant

Versus

1. Income - Tax Appellate Tribunal Through - Assistant Registrar, Raipur Bench, Raipur (Chhattisgarh)
2. The Deputy Commissioner Of Income - Tax - 1 (1), Bunglow No. 32/32, Opp. Central Excise Building, Amdi Nagar, H U D C O, Bhilai, District Durg (Chhattisgarh)

----Respondents

Tax Case No. 38 of 2015

M/s P. S. Steel Tubes Pvt. Ltd. 27- Akashganga, Supela, Bhilai, District - Durg (Chhattisgarh)

---- Appellant

Versus

1. Income - Tax Appellate Tribunal Through - Assistant Registrar, Raipur Bench, Raipur (Chhattisgarh)

2. The Deputy Commissioner Of Income - Tax - 1 (1), Bunglow No. 32/32, Opp. Central Excise Building, Amdi Nagar, H U D C O, Bhilai, District Durg (Chhattisgarh)

----Respondents

For Appellants:- Shri Manoj Kumar Sinha, Advocate.
For Respondents:- Smt Naushina Afrin Ali, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Chief Justice

26/10/2015

1. The questions involved for consideration in this batch of appeals filed under Section 260-A of the Income Tax Act (hereinafter called 'the Act) by the same Appellant are common. The only difference being that they relate to different assessment years and the amounts involved therefore also vary. Each of the appeals is barred by delay of approximately 136 days. Separate I.A. applications have been filed in each of them to condone delay for reasons mentioned. Section 260-A (2)(a) provides that an appeal may be entertained after expiry of 120 days, if there was sufficient cause shown for not filing it within the period prescribed.

2. We have considered the submissions on behalf of the parties with regard to condoning of delay. The Appellants had earlier filed separate Writ applications (Tax) assailing the impugned orders which were permitted to be withdrawn for availing the statutory remedy of appeal. We are therefore satisfied that there exists sufficient cause to condone delay. It is ordered acordingly.

3. Since the question of law arising for our consideration in these appeals is extremely short, we proceed to frame the question of law and dispose it at the stage of admission itself. The question of law is framed as follows:-

> "Whether the Appellate Tribunal committed an error in law and on facts by remanding the matter to the Assessing Officer for deciding afresh whether the sales tax subsidy was a capital or a revenue receipt, after examining the entire scheme of the notification dated 16.10.1986.

4. Learned Counsel for the Appellant submitted that he does not agitate the issue for grant of relief with regard to power subsidy as capital receipt. The relief sought is confined to treating the sales tax subsidy under the State Government Notification dated 16.10.986 as capital and not revenue receipt. The Appellate Tribunal committed gross error in law and on facts by not considering that the First Appellate Authority, the Commissioner, Income Tax (Appeals) had fully considered and discussed the scheme of the notification dated 16.10.1986 before arriving at the conclusion that the sales tax subsidy was a capital receipt disagreeing with the opinion and findings of the Assessing Officer to the contrary. The Appellate Tribunal has failed to discuss and find fault with the reasoning of the First Appellate Authority while setting aside the order of the Assessing Officer on that ground. There was thus no justification for the Appellate Tribunal to remand the matter to the Assessing Officer for fresh decision.

5. Counsel for the Revenue opposing the appeals submitted that no prejudice has been caused to the Appellants as they have been directed to be given a fresh opportunity of hearing by the Assessing Officer. Apparently, the Appellate Tribunal was not satisfied with the discussion made by the First Appellate Authority with regard to the notification dated 16.10.1986 and therefore, in its wisdom, has remanded the matter to the Assessing Officer to reconsider the matter in view of the entire scheme of the notification dated 16.10.1986. The appeals therefore raise no substantial question of law to demand consideration by the Court.

6. We have considered the submissions on behalf of the parties.

7. The Assessing Officer had earlier held that both the subsidies were taxable as revenue receipts. On appeal by the Appellant the Commissioner of Income Tax (Appeals) set aside the order of the Assessing Officer holding them to be capital receipts and hence not taxable. The Appellate Tribunal set aside the order of the Commissioner of Income Tax (Appeals). The Appellant filed appeal under Section 260-A of the Act registered as I.T.A. 40 of 2000 against the order of the Appellate Tribunal dated 11.11.1999 in which the following question of law was framed :

> "Whether on the facts and in the circumstances of the cases and the nature of incentive granted by the State of Madhya Pradesh in regard to power subsidy and sales tax subsidy, is the Tribunal right in law in holding that the subsidies are of the nature of revenue receipt and not capital receipt."

The following additional questions of law were subsequently framed under Section 100(5) of the Act.

> (2) In the absence of any discussion as to what is the true object and nature of the two subsidies received by the assessee, during the period in question whether impugned finding of the Tribunal is legally and factually sustainable ?
> (3) if the answer to the question number 2 is in affirmative i.e. in favour of the appellant, then, what orders are called for in the appeal ?

8. On 16.8.2012, the order of the Appellate Tribunal was set aside and the matter remanded to the Tribunal observing that it had failed to consider the issue of whether the subsidies were capital or revenue receipts in view of the law laid down in (1997) Vol.228 ITR 253(SC) (Sahney Steel and Press Works Ltd. v. Commissioner of Income Tax) with directions to decide the matter afresh keeping in view the nature, object and purpose of the two schemes of subsidies.

9. The Appellate Tribunal by the impugned order dated 24.12.2014 has held that power subsidy was a capital receipt and hence taxable and which is not assailed. With regard to the sales tax subsidy, the Tribunal has remanded the matter further to the Assessing Officer for deciding it afresh after considering the entire scheme of the notification of the State government dated 16.10.1986 more particularly with it regard to the nature, object and purpose of the scheme.

10. The limited issue for our consideration is if on the earlier occasion the scheme of the Notification dated 16.10.986 had been considered or not with regard to whether the sales tax subsidy amounted to capital or revenue receipts. The Assessing Officer had arrived at the conclusion that it amounted to revenue receipt and was taxable. In appeal the Commissioner of Income Tax (Appeals), after full and proper appreciation and consideration of the scheme framed by the State Government, by a reasoned discussion arrived at the conclusion that the nature of sales tax subsidy given was a capital receipt and not revenue receipt thus not taxable. The Appellate Tribunal has not considered or discussed the order of the Commissioner of Income Tax (Appeals) or why it was erroneous and not sustainable and without it setting aside has remanded the matter to the Assessing Officer to decide afresh if the grant of sales tax subsidy was a capital or revenue receipt after considering the entire scheme appearing in the notification dated 16.10.1986. In absence of any conclusion arrived at by the Appellate Tribunal, why and how the reasoning of the Commissioner of Income Tax (Appeals) was erroneous in law, the Appellate Tribunal could not have directed fresh consideration all over again by the Assessing Officer. The order of the Appellate Tribunal is therefore held to be not sustainable on the

short ground that it has failed to consider a very relevant material before remanding the matter. The only reasonable conclusion we can draw is that the Appellate Tribunal was not in a position to distinguish or differ with the order of the Commissioner of Income Tax (Appeals) in view of the law discussed in Sahney Steel (supra) and therefore considered it prudent to simply remand the matter to the Assessing Officer without any discussion in this regard.

11. The question of law is therefore answered in favour of the Appellant and against the Revenue. The order dated 24. 12. 2014 is set aside to the extent that it remands the matter to the Assessing Officer for fresh decision whether the sales tax subsidy was a capital or revenue receipt. The Appeals are allowed.

Sd/-	Sd/-
(Navin Sinha) **CHIEF JUSTICE**	(P. Sam Koshy) **JUDGE**

Priya