$~R-70.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA No. 830/2005

THE COMMISSIONER OF THE INCOME TAX-VI, NEW DELHI
..... Appellant

Through Mr. Ruchir Bhatia & Mr. Puneet Rai, Advocates.

versus

M/S BASTI SUGAR MILLS COMPANY LIMITED ..... Respondent

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **01.02.2018**

This appeal by the Revenue relates to Assessment Year 1995-96 and arises from order dated 22nd February, 2005 passed by the Income Tax Appellate Tribunal in ITA No. 1354/D/99 in the case of The Basti Sugar Mills Company Limited.

2. By order dated 30th November, 2005, the following substantial question of law was framed:-

> "Whether the ITAT was correct in law in holding that the incentive given by the Government in the form of higher free sugar quota is in the nature of capital receipts exempt from tax?"

3. We would not like to elaborate and refer to the assessment order and the appellate orders as the issue raised in the present appeal is covered by the

decision of the Supreme Court in ***Commissioner of Income Tax versus Ponni Sugars and Chemicals Limited***, [2008] 306 ITR 392 (SC).

4. During the course of hearing, learned counsel for the Revenue has accepted that the nature and character of the subsidy and reason for grant of the same was identical to the subsidy examined in ***Ponni Sugars and Chemicals Limited*** (supra), though the scheme applicable was relating to a different period.

5. The fact that the schemes applicable relate to different periods would not be material and what is relevant is whether the terms and conditions of grant/scheme were identical. This would determine the nature and character of the subsidy whether it was "capital" or "revenue" in nature.

6. In view of the above, we would follow the ratio in ***Ponni Sugars and Chemicals Limited*** (supra) and hold that the subsidy was "capital" in nature. Accordingly, the question of law quoted above is answered against the appellant-Revenue and in favour of the respondent-assessee. The appeal is disposed of, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 01, 2018
VKR