

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/91/2018
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
VS
M/S. BUDGE BUDGE REFINERIES LIMITED

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 22nd May 2024.

Appearance:

Mr. Tilak Mitra, Advocate
... for the appellant.

Mr. Ananda Sen, Advocate
... for the respondent.

1. Heard Sri Tilak Mitra, learned senior standing counsel for the appellant and Sri Ananda Sen, learned counsel for the respondent assessee.
2. This appeal was admitted by order dated 25.06.2018, on the following substantial question of law:-

“Whether the decision of the Tribunal in holding sales tax incentive to be a capital receipt is perverse or not?”

Facts

3. Briefly stated, facts of the present case are that the Government of West Bengal brought “West Bengal Incentive Scheme, 2000” for promoting

industrialisation in backward areas and to allure entrepreneurs to set up large, medium, cottage and small scale projects. The main aim and purpose of the Scheme was “promotion of industries in the State of West Bengal” and for that purpose, it provided incentives.

4. Allured with the Scheme, the respondent herein intended to set up an edible oil refinery plant and a captive power generation plant at Budge Budge, South 24 Parganas. The Government of West Bengal, Department of Commerce and Industries vide letter No.1219/JS/DC dated 22.03.2004, approved the aforesaid mega project for Industrial Promotion Assistance, State Capital Investment Subsidy, Waiver of Electricity Duty, Employment of General Subsidy, Remission of Stamp Duty and Registration Charges. In the present set of facts, we are concerned only with the Industrial Promotion Assistance (for short ‘IPA’) which was sanctioned to the respondent being 75% of the Sales Tax paid in the year previous to the year during which IPA would be released subject to maximum of 100% of the fixed capital investment. Thus, the subsidy granted under IPA to the respondent was related to fixed capital investment i.e. maximum 100% of the fixed capital investment. The IPA was available for a period of 15 years or till the financial cap, i.e. 100% of the fixed capital investment, is reached. To obtain the subsidy, the respondent unit was to apply to the Commissioner, Commercial Taxes, West Bengal in the prescribed form requesting to certify the total amount of tax paid during the year on

sales and purchases in respect of which application has been made and upon receipt of such application, the Commissioner was to verify the payments and other particulars contained in the application and to issue a certificate to the Managing Director of West Bengal Industrial Corporation Limited certifying the sales tax paid by the respondent unit on its sales during the year in question. On receipt of the intimation as aforesaid, the MD of WIC Limited issued a cheque to the respondent for an amount @ 75% of the tax paid by the unit on its sales in the previous year as IPA. This benefit could be claimed and was claimed by the respondent only after the total investment crossed the limit of Rs.25 crore and on starting commercial production. Thus, as per the Scheme, the IPA was provided as incentive for setting up new unit or expansion of existing unit, though the mode of calculation of assistance was sales tax paid by the respondent company. During the assessment years in question i.e. 2009-10, 2010-11 and 2011-12, the respondent assessee received subsidy as under:

Serial No.	Assessment Year	Amount of Subsidy
1.	2009-10	Rs.6,19,47,252/-
2.	2010-11	Rs.7,33,92,730/-
3.	2011-12	Rs.7,55,60,000/-

5. The aforesaid subsidy amount was sought to be added by the Assessing Officer in the income of the assessee treating it as revenue receipt, whereas the assessee claimed the aforesaid amount to be capital receipt. Aggrieved with the assessment order, the respondent assessee filed an appeal before the Commissioner of Income Tax (Appeals), which was allowed. Aggrieved with the order of the CIT(A), the revenue filed ITA Nos. 388, 389 and 390/Kol/2014 (assessment years 2009-10, 2010-11 and 2011-12) before the Income Tax Appellate Tribunal, "C" Bench, Kolkata, which has been dismissed by the impugned order dated 18.01.2017.

Submissions

6. Learned senior standing counsel for the appellant submits that the subsidy received by the respondent assessee was a revenue receipt and therefore, the Assessing Officer has lawfully treated as revenue receipt. He further submits that the sales tax incentive received by an entrepreneur is a revenue receipt in view of the law laid down by this Court in Commissioner of Income Tax v. Birla Corporation Limited [2024] 159 taxmann.com 632 (Calcutta).
7. Learned counsel for the respondent assessee submits that the Scheme-2000 was brought by the State Government to allure entrepreneurs to set up industries in backward areas. The reference of 75% of the sales tax is merely for the purposes of calculation of amount of subsidy. The

subsidy receipt was of capital nature and it has been correctly held to be capital subsidy by the CIT(A) and the ITAT. In support of his submission, learned counsel for the respondent has relied upon a judgment of this Court in Principal Commissioner of Income Tax v. Budge Budge Refineries Limited, [2002] 139 taxmann.com 124 (Calcutta) which relates to the same Scheme and the respondent assessee.

Discussion & Finding

8. We have carefully considered the submissions of learned counsel for the parties and perused the record of the appeal. We have already noted the facts of this case, which leaves no manner of doubt that the scheme under which the subsidy was received was for promotion of industrialization in the state of West Bengal. In the respondent assessee's own case for the assessment years 2007-08 and 2008-09, the controversy as to whether the subsidy received is a capital receipt or a revenue receipt; came for consideration before a co-ordinate Bench of this Court in the case of Budge Budge Refineries Limited (supra) and the Court dismissed the appeal of the revenue and held that the amount received is capital subsidy and Section 41(1) of the Income Tax Act, 1961 could not be invoked. Learned counsel for the appellant has completely failed to distinguish the aforesaid judgment of the co-ordinate Bench of this Court in the respondent assessee's own case

relating to the same Scheme with respect to assessment years 2007-08 and 2008-09. We have also perused the aforesaid judgment of the coordinate Bench and we find that the controversy involved is squarely covered by the said judgment. We also find ourselves in agreement with the aforesaid judgment in the case of Budge Budge Refineries Limited (supra). That apart, the findings recorded by the ITAT in the impugned order are findings of fact based on consideration of relevant evidences on record.

9. For all the reasons aforestated, the substantial question of law as aforequoted is answered in favour of the respondent assessee and against the appellant revenue and it is held that the subsidy received by the respondent assessee under the Scheme-2000 was capital receipt.
10. For the all the reasons aforestated, the appeal is **dismissed**.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)