

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204-1

ITA-517-2008 (O&M)
Date of Decision: 26.02.2026

M/S VARDHMAN TEXTILES LTD.

...Appellant

Versus

COMMISSIONER OF INCOME TAX & ANR.

...Respondents

And

Sr. No.	Case No.	Appellant (s)	Respondent(s)
2.	ITA-292-2019 (O&M)	The Pr. Commissioner of Income Tax	M/s Vardhman Textiles Ltd
3.	ITA-128-2021 (O&M)	Chief Commissioner of Income Tax	M/s Vardhman Textiles Ltd
4.	ITA-428-2018 (O&M)	The Pr. Commissioner of Income Tax	M/s Vardhman Textiles Ltd
5.	ITA-323-2019 (O&M)	Pr. Commissioner of Income Tax	M/s Vardhman Textiles Ltd
6.	ITA-71-2020 (O&M)	The Pr. Commissioner of Income Tax	M/s IOL Chemicals and Pharmaceuticals Ltd

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present:- Ms. Radhika Suri, Sr. Advocate with
Mr. Abhinav Narang, Advocate and
Ms. Parnika Singla, Advocate for assessee

Mr. Ranvijay Singh, Sr. Standing Counsel with
Ms. Nikita Garg, Jr. Standing Counsel and
Mr. Vidhul Kapoor, Jr. Standing Counsel
for the Income Tax

JAGMOHAN BANSAL, J. (ORAL)

1. As common issues are involved in the captioned appeals, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from

ITA-517-2008.

2. The appellant through instant appeal under Section 260A of the Income Tax Act, 1961 (for short '1961 Act') is seeking setting aside of order dated 25.01.2008 passed by Income Tax Appellate Tribunal, Chandigarh (for short 'ITAT') for the Assessment Year 2000-2001.

3. The appeal was admitted on 05.01.2015 to adjudicate following questions of law:-

- i. The nature of sales tax subsidy/exemption granted under the relevant Industrial Policy of the State Government?
- ii. Whether the assessee is an 100% export oriented unit entitled to exemption as per Section 10 B of the Income Tax Act?
- iii. If answer to question No. 2 is in the affirmative whether the assessee would be entitled to assessment of income under Section 80 HHC of the Income Tax Act?
- iv. Whether sale of an import licence falls within the purview of the provisions of Section 80I of the Act?

4. Learned Senior Counsel for the appellant submits that questions No.3 and 4 already stand answered against assessee and she does not press question No.2. The only question which this Court has to consider is question No.1.

5. The appellant is engaged in the business of manufacturing of yarn. The State Government vide notification dated 01.06.1996 introduced Incentive Scheme for new industrial units. The benefit was also available to industrial units which carried out expansion. The appellant set up its unit in backward area and became eligible for sales tax exemption. As per para 6.3 of the policy, the appellant was entitled to sales tax subsidy for 10 years

subject to ceiling of 300% of fixed capital investment. Appellant during the period in question collected sales tax from its customers, however, did not deposit with State Government in view of aforesaid exemption scheme. The appellant filed its Income Tax Return on 30.11.2000 disclosing income of Rs.28.04 crore. The return was processed under Section 143(1) of 1961 Act and refund of Rs.2.92 crore was assessed. The appellant filed revised return on 18.07.2001 revising its total income from Rs.28.04 crore to 26.73 crore. The Assessing Officer vide order dated 31.03.2003 assessed appellant's income to the tune of Rs.42.55 crore and imposed super tax penalty/fine amounting to Rs.7.34 crore. The appellant preferred an appeal which came to be partly allowed vide order dated 31.03.2003 passed by Commissioner of Income Tax (Appeals). The appellant filed appeal before ITAT which vide order dated 25.01.2008 declined its claim qua sales tax subsidy. The Tribunal held that sales tax subsidy was revenue receipt, thus, liable to tax.

6. Learned Sr. counsel for the appellant submits that Division Bench of this Court in “*Commissioner of Income Tax-1, Ludhiana Vs. Abhishek Industries Ltd*”, [2006] 286 ITR 1 (P&H) held that sales tax subsidy is revenue receipt. The said judgment was passed without considering judgment of Hon'ble Supreme Court in “*Commissioner of Income Tax Madras Vs. Ponni Sugars & Chemicals Ltd*”, 2008 (9) SCC 337. Supreme Court in *Ponni Sugars (supra)* has clearly held that time or manner of subsidy is irrelevant. One is supposed to examine purpose test. The purpose of sales tax subsidy in the case in hand was to promote capital investment in the State of Punjab, thus, sales tax incentives received by appellant were in the nature of capital receipt. Supreme Court in “*Commissioner of Income*

Tax-I, Kolhapur Vs. M/s Chaphalkar Brothers Pune”, 2018 (13) SCC 358

has further clarified that if incentives are granted to promote capital investment, these should be treated as capital receipt and income tax cannot be charged. The Supreme Court while adjudicating ***Chaphalkar Brothers (supra)*** has approved judgment of J&K High Court in ***“Shree Balaji Alloys Vs. Commissioner of Income Tax & Anr.”, 2011 SCC OnLine J&K 269.***

7. *Per contra*, learned counsel for respondent submits that this Court in ***Abhishek Industries (supra)*** has duly considered nature of subsidy. The Court has categorically held that subsidy was granted post commencement of production. The assessee was free to utilize sales tax incentives. Said judgment till date has not been set aside, thus, this Court cannot ignore said judgment.

8. On being asked about order of ITAT passed in compliance of order dated 18.12.2014 of this Court in ***ITA-146-2014*** titled as ***“M/s Vardhaman Acrylic Ltd. Vs. Commissioner of Income Tax”***, learned counsel for the respondent submitted that ITAT has adjudicated the issue in favour of assessee on the basis of judgments of Supreme Court in ***Chaphalkar Brothers (supra)***. He further conceded that Tribunal has allowed appeal of the assessee on the basis of consent accorded by Department.

9. Heard the arguments and perused the record.

10. This Court in ***Abhishek Industries (supra)*** formed an opinion that there is no dispute that sales tax subsidy is being received on recurring basis after the unit had come into production. There is no document or material placed on record to substantiate that subsidy of the kind under

consideration was to enable to acquire new plant and machinery or as an aid to set up the industry, rather it is quite evident that subsidy is in the form of an operational subsidy provided by the State after the industry had been set up and commenced commercial production. The subsidy is not in the form of financial assistance for setting up of the industry. The endeavor of the State was to provide the newly set up industry a helping hand for a specified period to enable them to be viable and competitive.

11. The judgment in *Abhishek Industries (supra)* was delivered on 04.08.2006. The same issue came up for consideration before Supreme Court in *Ponni Sugars (supra)*. Supreme Court taking into account its earlier judgment in *Sahney Steel and Press Works Ltd. Vs. CIT, [1997] 228 ITR 253 (SC)* held that one has to apply purpose test to determine whether sales tax subsidy is revenue or capital receipt. The point of subsidy, its source and form is immaterial. Judgment in *Ponni Sugars (supra)* was delivered on 16.09.2008 which was much after judgment in *Abhishek Industries (supra)*. Litigation did not end here. Matter again came up for consideration before Supreme Court in *Chaphalkar Brothers (supra)*. The Court held that immediate object is irrelevant. Larger object must be kept in mind while determining nature of the subsidy. The Court approved judgment of J&K High Court in *Shree Balaji Alloys (supra)*. It is apt to notice here that J&K High Court in *Shree Balaji Alloys (supra)* was adverting to nature of excise duty exemption granted to units set up in State of Jammu & Kashmir. As per Central Government Scheme, the units set up in J&K were entitled to collect excise duty for 10 years, however, were not liable to deposit with Department. J&K High Court while reversing judgment of ITAT held that

excise duty subsidy is capital receipt as it is linked with investment and generation of employment in J&K.

12. This Court in ITA-292-2019 remanded the matter back to ITAT to determine the nature of sales tax subsidy. The remand order was passed considering judgments of this Court in *Abhishek Industries (supra)* as well as Supreme Court in *Ponni Sugars (supra)*. The ITAT vide order dated 08.12.2018 has allowed appeal of the assessee. Relevant extracts of order dated 18.12.2018 passed by ITAT read as:-

“12. Ground No.5 : Vide ground No.5, the assessee has agitated the action of the CIT(A) in taxing the amount received on sale tax exemption / subsidy. Both the Ld. representatives of the parties have fairly submitted that the issue is now covered by the various decisions of the Hon'ble High Courts including the decision of the Hon'ble Supreme Court in 'CIT-1 Vs. M/s. Chaphalkar Brothers, Pune and Others' in Civil Appeal Nos.6513-6514 of 2012 order dated 7.12.2017, wherein, it has been held that the aforesaid receipt is a capital receipt and not exigible to taxation. We hold accordingly and the lower authorities are directed no to tax the aforesaid receipts.”

13. From the perusal of above paragraph, it is evident that Income Tax Department has conceded before ITAT that in view of judgment of Supreme Court in *Chaphalkar Brothers (supra)* sales tax subsidy received by appellant was capital in nature. The Revenue has neither filed review application before Tribunal nor is disputing authenticity of said statement. In such circumstances, we are bound to form an opinion that Revenue before Tribunal has conceded that subsidy in question is capital in nature.

14. The appellant received sales tax subsidy in the form of retention of sales tax collected from buyers. The subsidy was granted in lieu of capital

investment made in the State of Punjab. The quantum of subsidy was linked to place of unit. Few areas of the State of Punjab attracted higher subsidy than others. The appellant received subsidy for 10 years and its ceiling was 300% of fixed capital investment. The subsidy was available only on account of capital investment in the State of Punjab. As per judgments of Hon'ble supreme Court in *Ponni Sugars (supra)* and *Chaphalkar Brothers (supra)*, time and manner of subsidy is irrelevant. In *Chaphalkar Brothers (supra)*, Supreme Court has clearly held that exemption from entertainment tax received by multiplex was only because of capital investment. The entrepreneurs were promoted to make investment in multiplex and in return were granted exemption from entertainment tax. The said judgment is squarely applicable to instant case. The sales tax subsidy received by appellant was capital in nature and could not be taxed as revenue receipt.

15. In the wake of above discussions and findings, question No.1 is answered in favour of assessee/appellant.

16. Appeal of assessee is allowed and appeals of Revenue are dismissed.

17. Pending application(s), if any, also stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

(AMARINDER SINGH GREWAL)
JUDGE

February 26, 2026
Deepak DPA

Whether Speaking/reasoned: Yes/No
Whether Reportable: Yes/No