IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)

BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI A.T. VARKEY, JUDICIAL MEMBER

ITA No.4698/Del./2011
(ASSESSMENT YEAR : 2007-08)

M/s. Shivalik Prints Limited, Flat No.3931, Block C – 9, Vasant Kunj, New Delhi. **(PAN : AADCS6186R)**	vs.	Addl.CIT, Range 8, New Delhi.
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : S/Shri Anil Chopra FCA & V.K. Garg, Advocates
REVENUE by : Shri Sujit Kumar, Senior DR

O R D E R

PER A.T. VARKEY, JUDICIAL MEMBER :

This appeal, at the instance of the assessee, is directed against the order of the CIT (Appeals)-XI, New Delhi dated 27.07.2011 for the assessment year 2007-08.

3. Brief facts of the case are that the assessee is a company incorporated on 11.08.1998 and was engaged in the business of dying printing and processing of fabrics. The return of income was filed on 26.10.2007 declaring a loss of Rs.1,79,12,287/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter 'the Act') and thereafter, the assessment was completed u/s 143(3) of the Act on 24.12.2009 computing loss at Rs.99,37,978/- as against

returned loss of Rs.1,79,12,287/- as declared by the assessee after making certain addition/disallowance. On appeal, the ld. CIT (A) partly allowed the appeal.

4. Now the assessee, being aggrieved, is in appeal before us by taking the following ground :-

> "1. That the Ld. Commissioner of Income Tax (Appeals) [Ld. CIT(A)] has erred on facts and in law in sustaining the addition of Rs.74,02,161/- being the amount of capital subsidy on the ground that the same is a revenue receipt. The addition as confirmed by Ld. CIT (A) is unlawful deserves to be deleted.
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> 2. That the Ld. CIT (A) has erred on facts and in law in treating the capital subsidy of Rs.74,02,161/- received from the Govt. of India, Ministry of Textile under the Technology Upgradation Fund Scheme (TUF Scheme) against the purchase of new machinery as revenue receipt. Under the purpose test, the said capital subsidy constitutes a capital receipt as held by Hon'ble Apex Court in the case of CIT vs. Ponni Sugars & Chemicals Ltd. reported in 306 ITR 392 (SC). The disallowance has been made on erroneous views and / or non-appreciation of the facts or law involved without properly considering the material and case law on record. As such too the same is unwarranted and not capable of being sustained."

5. Brief facts relating to the aforesaid ground are that on scrutiny of the record, the AO observed the assessee company had received subsidy of Rs.74,02,161/- which was claimed as Capital Subsidy and this subsidy was received from Ministry of Textiles for purchase of machinery. The AO asked the assessee as to why the aforesaid amount be treated as revenue receipt. The assessee replied that the subsidy was received under TUF Scheme and as per the bankers subsidy for cast, the very nomenclature of the subsidy was additional

incentive in the form of 10% capital subsidy for the processing machinery and also relied on the judgment of the Hon'ble Supreme Court in the case of CIT vs. Ponni Sugars and Chemicals Ltd. – 306 ITR 392 (SC) and also CIT vs. Triumala Bricks and Tiles Factory – 217 ITR 547 (AP). The AO observed that the case laws relied upon by the assessee are not applicable in the present case of the assessee on the facts of the case and after relying on certain judicial pronouncements, he treated the aforesaid amount of Rs.74,02,171/- as revenue receipt and added back to the income of the assessee.

6. Aggrieved, the assessee filed an appeal before the ld. CIT (A) on this issued and the ld. CIT (A) confirmed the addition by observing as under :-

> "2.2 I have also gone through the submission by the Ld AO. The crux of the issue is to decide whether subsidiary received from the Textile Ministry in the present facts of the case should be treated as Revenue receipt or capital receipt. According to appellant it is a capital receipt because of the particular scheme of the Govt. Conversely according to the Ld AO it is Revenue receipt and nothing but profit supplement to be offered as income from the relevant period. The appellant in its favour has given some case laws, equal number of decisions were also given by the Ld AO.
>
> 2.3 According to me, this is essentially a question of fact. The grant was received from the Textile Ministry would by itself will not make the issue either in favour of the Revenue or the appellant. We have to go behind the documents and to see the nature of grant given by the Govt Authority. The examination of document shows that the State has given the appellant enterprise a running support to continue its business activity. The fact that the scheme indicates that the appellant would get 10% of the total P&M installed during the year would not make the nature of payment as capital. The fact of the matter is that this is a profit substitute as rightly observed by the Ld AO and he has referred decisions which are identically suitable for the case under review. Some of the catena of cases referred by him are listed below :-

Merinopli & Chemicals Ltd v CIT (1994) 209 ITR 508 (Cal)
V.V.S.V. Meenakshi Achi v CIT (1996) 60 ITR 253 (SC)
Saroja Mills Ltd v CIT (1997) 220 ITR 626 (Mad)

There are also other cases referred by him and it is no need to mention a" the cases. From the facts of the present case and also from the judicial decision as pronounced by the High Courts and the Apex Court, and the Apex Court, the ground of the appellant does not get substantiated. An examination of commentaries thereon it was held that over about 50 years since inception of the present statute, the Courts with very few exceptions have recognized such type of grant issued by the Govt. Authority as profits supplementing and not as capital receipt. Therefore, it is concluded that the grant received is a Revenue receipt and the action of the AO does not require interference of any sought from this office."

7. Assailing the aforesaid order of the ld. CIT (A), the ld. AR for the assessee submitted that this is a scheme from textile Ministry for modernization of textile industries and the scheme is known as Credit Linked Capital Subsidy under TUFS (Technology Upgradation Fund Scheme). He submitted that under this scheme, the Government gives the fund straightway to the designated bank and the bank has to give a certificate to the effect that the Plant & Machinery was purchased and in assessee's case, the bank has given a certificate dated 26.08.2006. He submitted that the AO treated the same as revenue receipt on the ground that the same was released as profit supplement. However, he submitted that the AO has not given any detailed reason for treating the grant as revenue receipt and not capital receipt. The ld. AR categorically stated that the assessee has received the grant once only during the relevant period. He

submitted that there was no assistance from the Government either in AY 2006-07 or in 2008-09. He further submitted that the scheme indicates that the assessee would get 10% of the total P&M installed during the year. He submitted that the assessee's case is squarely covered by the decision of Hon'ble Supreme Court in the case of Ponni Sugars & Chemicals Ltd reported in 306 ITR 392 (SC) wherein the Hon'ble Supreme Court has held that, "*The character of the receipt of subsidy in the hands of the assessee under a scheme has to be determined with respect to the purpose for which the subsidy is granted. In other words, one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. The source is immaterial. If the object of the subsidy is 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 is to enable the assessee to set up a new unit or to expand an existing unit then the receipt of the subsidy would be on capital account.*" He also relied on the decision of CIT vs. Tirumala Bricks & Tiles Factory reported in 217 ITR 547 (AP), wherein it was held that subsidy for setting up/ expansion of plant is a capital receipt. The ld. AR further submitted that the case laws relied upon by the AO pertain to revenue subsidy in the form of reimbursement of specified revenue expenditure so as to supplement the trading receipts and as such, the same are not applicable in the facts of the assessee where the subsidy was given on capital account in the form of reimbursement of part of capital cost to encourage the upgradation of the textile

industry. He submitted that the capital subsidy paid in assessee's case is clearly within the purpose and object to promote capital investment, as such the same is clearly a capital receipt as per the said case law relied upon by the assessee. He categorically submitted that the aforesaid Apex Court decision is a binding and a recent one and in any case, the Hon'ble High Court decisions cited by Ld. AO of earlier dates could not override the aforesaid recent Hon'ble Supreme Court decision, which is in assessee's favour. He, however, submitted that in any case, the Hon'ble High Court decisions relied by the AO are clearly distinguishable and are not applicable to the facts of this case. Further, he relied on the CBDT Circular No.142 dated 01.08.1974, the capital subsidy involved is a capital receipt. In view of the above, ld. AR submitted that the subsidy received by the assessee is a capital receipt and not a revenue receipt and pleaded to delete the addition and allow the appeal of the assessee.

8. On the other hand, the ld. DR relied on the orders of the authorities below and submitted that the lower authorities rightly held the subsidy as revenue receipt and pleaded not to interfere with the orders of the authorities below on this issue.

9. We have heard both the sides and perused the materials. The sole issue that is before us is whether the receipt of Rs.74,02,161/- from Ministry of Textile by the assessee was a capital receipt or a revenue receipt. Both the authorities below have held the receipt as revenue receipt and added the same to the income of the assessee. Before us, the ld. AR pointed out that the subsidy

was received from the Ministry of Textile for the purchase of plant and machinery and it was received under the Technology Upgradation Fund Scheme (TUF Scheme) against the purchase of new machinery. The very nomenclature of the subsidy, according to the ld. AR, was to get additional incentive in the form of 10% capital subsidy for purchasing the machinery and relied on the judgment of the Hon'ble Supreme Court in the case of CIT vs. Ponni Sugars and Chemicals Ltd. (supra), CTI vs. Sham Lal Bansal – (2011) 11 taxmann.com 369 (P&H) and CIT vs. Tirumala Bricks and Tiles Factory (supra) and contended that a receipt of such nature which is given directly to the bank cannot be termed as revenue receipt and ought not to have been added to the income of the assessee. We find force in the contention of the ld. AR that in a similar case, the Hon'ble Punjab & Haryana High Court in CIT vs. Sham Lal Bansal (supra), the facts being similar, wherein the assessee received subsidy for repayment of loan taken for building and plant and machinery under the Credit Linked Capital Subsidy Scheme under the TUF Scheme of the Ministry of Textiles was held as capital in nature. We find that the objective of the subsidy scheme was to enhance the technology apparatus of the assessee by assisting in acquiring machinery and since it was the intention of the subsidy for the purpose for which it was given was for TUF Scheme by the Ministry of Textiles to the assessee, so the AO and the CIT (A) erred in determining that the receipt is revenue and that the receipt is a profit substitute of the assessee. Therefore, in the light of the judgment of the Hon'ble Supreme Court in CIT vs.

Ponni Sugars and Chemicals Ltd. (supra), wherein the Hon'ble Lordships have held that the character of the receipt of a subsidy in the hands of the assessee under a scheme has to be determined with respect to the purpose for which the subsidy is granted. In other words, one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. If the object of the subsidy 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 is to enable the assessee to set up a new unit or to expand an existing unit then the receipt of the subsidy would be on capital account. We find that in the facts of this case, where the subsidy was given on the capital account in the form of capital cost to encourage upgrading the textile industry and the purpose and object was for capital investment, as such, is clearly a capital receipt as per the case laws relied upon by the ld. AR before us. Therefore, we direct that the receipt of Rs.74,02,161/- be treated as receipt of capital nature and not to be taxed in the hands of the assessee. We order accordingly.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in open court on this day of 5th February, 2016.

Sd/-	**sd/-**
(N.K. SAINI)	**(A.T. VARKEY)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 5th day of February, 2016/TS

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A)-XI, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.