

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Income Tax Appeal No. 39 of 2008

Commissioner of Income Tax, Haldwani, Nainital.

..... Appellant.

Versus

M/S Kisan Sahkari Chini Mill, Gadarpur, U.S. Nagar.

..... respondent.

Dated:- 15.5.2009

**Coram: Hon'ble Prafulla C.Pant, J.
Hon'ble B.S.Verma, J.**

{Prafulla C. Pant, J. (Oral)}

Heard Sri Pitamber Maulekhi, learned Standing Counsel for the appellant.

2. This appeal is directed against the order dated 22.2.2008 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C' in ITA NO. 1316/D/2004, Assessment Year 1997-98.

3. Brief facts of the case are that the assessee-respondent is a public sector co-operative sugar mill involved in manufacturing and sale of the sugar. The issue involved in this appeal is with regard to the Rs. 2,79,68,413/- received by the assessee being incentive as levy sugar released for free sale, claimed by the assessee as capital receipt but the Assessing Officer has treated it to be revenue receipt.

4. The Tribunal in its impugned order, challenged before us, dismissed the appeal of the revenue following the Judgment of this Court in ITA NO. 101 of 2006, CIT Vs. Kisan Sahakari Chini Mill Ltd., Sitarganj, decided on 26.3.2007.

Paras 4, 5 and 6 of the Judgment of the said case are being reproduced below :-

“4. The question quoted above can be answered only after examining the Incentive Scheme. In the first para of the said Scheme itself provides that ***the Scheme enabled sugar factories to become viable by utilizing the additional funds generated through such incentives for repayment of loans advances to them by Central Financial Institutions.*** The Sub Clause-2 of Clause iiA of the Scheme further says that ***in order to become entitled to incentives for the full period as detailed in paragraph 4 of this Scheme, the date of commencement of production for the first time (in respect of new factories) and the date of commencement of production at the expanded capacity (in respect of expansion projects) shall be within a period of 39 months from the date of letter of intent or licence, whichever is earlier.***

5. These two abstracts portion of the Scheme clearly shows that the incentive was for making the factory viable and was available only after the production was started. The Hon’ble Apex Court in ***Sahney Steel & Prem Works Ltd. v/s. CIT reported in (1997) 228 ITR 253 (S.C.)*** has held as under:-

“In the case before us, the subsidies have not been granted for production of or bringing into existence any new asset. The subsidies were granted year after year only after setting up of the new industry and commencement of

production. Such a subsidy could only be treated as assistance given for the purpose of carrying on of the business of the assessee. Applying the test of Viscount Simon in the case of Ostime (1946) 14 ITR (Suppl) 45 (HL), it must be held that these subsidies are of revenue character and will have to be taxed accordingly.”

6. In view of the above findings recorded by the Hon’ble Apex Court, we are of the opinion that this appeal lacks merit and does not require any interference.”

5. The ITAT has followed the view taken by this Court in the above case.

6. Therefore Having heard the learned counsel for the appellant and after going through the order passed by the ITAT, this Court does not find any fresh question of law to be decided by this Court.

7. The appeal is dismissed summarily.

(B.S.Verma, J.)

(Prafulla C. Pant, J.)

15.5.2009

RMV

