(2024) 06 ITAT CK 0004

Income Tax Appellate Tribunal (Delhi H Bench)

Case No: Income Tax Appeal No. 3360, 3361, 3364, 3365, 5645, 5839/DEL/2016

ACIT	APPELLANT
Vs	
Jindal Poly Films Ltd	RESPONDENT

Date of Decision: June 4, 2024

Acts Referred:

- Income Tax Rules, 1962 - Rule 8D
- Income Tax Act, 1961 - Section 14A, 69, 153A

Hon'ble Judges: G.S. Pannu, (VP); Anubhav Sharma, J

Bench: Division Bench

Advocate: Rohit Jain, Deeoashree Rao, Samrath Singh, Sapna Bhatia

Judgement

1. Present appeals are arising from the order of learned Commissioner of Income-Tax(Appeals) -30, New Delhi dated 21.03.2016 and relate to assessment year 2007-08.

2. The assessee filed its return of income on 25th October 2007 declaring an income of Rs.37,46,25,210. The assessee company is engaged in the business of manufacturing of Polyester chips of all grade, Biaxially Oriented Polyester Film (Bopet Fiolm), Biaxially Oriented Poly Propylene Film (BOPP), Metalized Film and PVDC Film. These products are sold in domestic market as well as export market. Thereafter, the search and seizure action was conducted on assessee and its group companies on 14.11.2011. Accordingly, the Assessing Officer issued notice under Section 153A of the Income-Tax Act, 1961 and directed the assessee to file return thereafter framed the assessment. The assessee in response to the notice under Section 153A of the Act filed the return declaring same income as it was declared originally i.e. Rs.37,46,25,210. During the course of assessment proceedings, the Assessing Officer also made a reference to the Transfer Pricing Officer (TPO) and sought his comments. However, he could not make

any addition as the TPO held that the transactions between assessee and the foreign entities were at arm's length. Be that as it may be, the Assessing Officer disallowed an amount of Rs.2,27,02,922 on the ground that this expenditure claim by the assessee for lacking and unloading charges of the films are bogus.

3. Aggrieved with the order of the Assessing Officer, assessee filed appeal before the learned Commissioner (Appeals) and assailed the order of the Assessing Officer.

4. In respect of the first issue i.e. disallowance of expenses related to payments made to contractors for loading and unloading for packing the assessee mainly argued that the payments were made via banking channel and after deducting the TDS and the contractor to whom the payments made were income-tax assessees and hence the assessee has successfully discharged its burden and the Assessing Officer failed to bring any adverse material in this regard. Further, the Assessing Officer has also failed to provide cross-examination of the persons whose statements were relied upon. Further, the assessee has also produced the contractors before the Assessing Officer who confirmed the receipts of payments.

5. Considering all these aspect, the learned Commissioner (Appeals) following the order of assessment years 2010-11 to 2012-13 which order has now been affirmed by the ITAT in ITA No.256/Del/2015 & Ors. dated 06.02.2024 allowed the appeal of the assessee.

6. Aggrieved with the order of learned Commissioner (Appeals), Revenue has preferred appeal before u s and assailed the order of learned Commissioner (Appeals).

7. The learned CIT DR strongly argued the case and relied upon the findings of the Assessing Officer in this regard.

8. After considering the rival submissions, we find that the issue of payments made to contractors is squarely covered in favour of the assessee by the order of ITAT in ITA No.256 to 258/Del/2013, wherein the ITAT observed as under:

"4. Against this order, assessee appealed before the Id. CIT (A). Ld. CIT (A) elaborately considered the issue and thereafter, he obtained written submissions from the assessee and obtained remand report from the AO also. Finally, he deleted the addition by holding as under :-

“ First main basis of the addition is revolving around the non existence of the alleged contractor at the address mentioned in the contractors bills enquired during search and post search proceedings. Subsequently, during the post search proceedings, when it was informed to the appellant for the first time why contractor expense should not be disallowed. The appellant submitted that the summons have been served on the contractors and they will comply with the requirements. These facts have been

reproduced in the assessment order. Thereafter, during the assessment proceedings, when the appellant was asked to substantiate the expense paid to these contractors, the appellant filed documentary evidences in form of the PAN card/ Adhar Card, service tax registration, copy of service tax return, copy of bank statement of the appellant company and e-TDS details about such contract payment etc. Subsequently, the Ld. Assessing officer asked to produce these sub contractors. During the assessment proceedings, the appellant produced five out of six contractors and statements of these contractors were recorded b the assessing officer. All of them confirmed that they have provided labour to the appellant company for packing and loading of finished product. During the appellate proceeding, the appellant has produced even sixth contractors Sh. Satravir Singh before the assessing officer whose statement was recorded by the Assessing Officer. In his statement, he confirmed to have supplied labour for packing, loading and unloading. The assessing officer has stated these fact in theassessment order.

During the remand, proceedings, when sixth labour contractor Sh. Satyabir Singh was produced before the assessing officer, he also explained that he has left the address where enquiry was done during search and post search proceedings, and shifted to the native place. He also stated that he was earlier residing at Sardar complex in Nasik and there is a rental agreement for the same. The relevant portion of statement is reproduced as under:-

"Q14. You could not be found during the search and survey operations and moreover during post search investigation and even during assessment proceedings. Please explain?

Ans. I had left the work with the company at that time. I went to my village in May 2010 itself. The investigation and enquiries were made at my previous addresses. Now company approached me for statement and I appeared

Q 16. Where did you reside at Nashik

Ans. I used to reside at Sardar Complex. Cinema Gali, Igatpuri, Nashik.

Q17. Please furnish the proof of residing at Nashik?

Ans. I used to reside in bachelor quarter from 2000 to 2004 and then took a residence on rent agreement of which was executed at that time. J will produce it if is traced."

In his statement, he has confirmed that he has provided labour to the appellant company. In view of the above facts, in my view, non traceability of contractor during search and post search proceeding has non weithage as these contractors were produced before the assessing officer and explained the reasonof their non presence at the address on the bills.

Second evidence relied by the assessing officer is that the employee of the company used to withdraw cash from the contractor's bank accounts. I have perused the bank accounts. Entries of withdrawal are 'self. Therefore, the cash has been withdrawal by the contractors. The contractors during the statement, however, accepted that the employee of the appellant company used to accompany him at the time of withdrawal of cash from the bank and cash used to be carried in companies vehicle. This arrangement was used to ensure for the payment distributed to labourers hired for the work of the company.

Third evidence relied by the Ld. Assessing Officer is that these contractors are Ex-employee of the company. There is no denial to the fact that these contractors were ex-employee or town persons. The contractors have also accepted these facts. Ld. AR argued that for continuous supply of labour, only reliable and known person can be deployed. Fourth basis relied by AO is that in the computer of the appellant bills of these contractors were found. All the contractors have stated that the bills were prepared at the premise of the appellant as these contractors were only supplying labour and does not have separate infrastructure. The only issue remains whether being known person as contractor, there is excess payment towards services rendered by the contractors. In this regard, Ld AR vehemently argued that before the assessing officer, the appellant has submitted that number of contract labour provided by these contractors are maintained by the appellant company and average monthly salary of each such employee is ranging from Rs. 6,000 to 7500/- which is minimum for semi-skilled labour. Further, the appellant has provided figures of salary and wages for per kg. production in similar industries. In appellant's case, the salary and wages per kg. production is in the range of 10%to 25% of other industries. There is no adverse findings in the assessment order on this submission. In view of the above facts and circumstances, I do not consider that there is excess payment on account payment for packing, loading and unloading charges made to contractors.
Considering the entire facts and circumstances of the case, in my view, no disallowance are required to made for the payment to contractors for loading, unloading and packing. Accordingly, the disallowance made to the contractors for each assessment year is hereby deleted. These grounds of appeal are allowed."

5. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

6. We find that the main plank of AO's action was that these labour suppliers are either bogus or ex-employees of the assessee; that these persons were not found at their respective addresses. However, Id. CIT (A)in his order has given a finding that during the remand proceedings, 5 out of 6 contractors were produced before the AO and statements of these contractors were recorded by the AO. All of them confirmed that

they have provided labour to the assessee company for packing and loading of finished product. Furthermore, before the Id. CIT (A), assessee produced the sixth contractor whose statement was also recorded. In his statement, he confirmed to have supplied labor for packing, loading and unloading.

6.1 Furthermore, another plank of AO is that the employee of the assessee company used to withdraw cash from the contractor's bank account. Ld. CIT (A) has noted that he has perused the banks accounts and the entries of withdrawal were self. Therefore, he held that cash withdrawn by the contractors and the contractors during the statement accepted that the employee of the assessee company used to accompany him at the time of withdrawal of cash from the bank and cash used to be carried in company's vehicle and this arrangement was used to ensure for the payment distributedto labourers hired for the work of the company.

6.2 Another plank of the AO is that these contractors are ex-employees of the assessee company. It has been submitted that this fact has been accepted. For this explanation, the assessee submitted that for continuous supply of labour, only reliable and known person can be deployed.

6.3 Another plank of AO is that in the computer of the assessee, bills of these contractors were found. It has been submitted that all the contractors have prepared the bills at the premise of the assessee as these contractors were only supplying labour and did not have separate infrastructure. Furthermore, Id. CIT (A) has also found that the salary and wages per kg. production is in the range of 10% to 25% of other industries and there was no adverse findings in this regard in the assessment order. Furthermore, books have not rejected. been

7. Accordingly, in the background of aforesaid discussion, we do not find any infirmity in the well-reasoned order of Id. CIT (A), hence we confirm the same."

9. Respectfully following the order of the Co-ordinate Bench, this ground is decided against the Revenue.

10. Second ground of appeal raised by the Revenue with respect to the deletion of addition of Rs.48,00,000 alleged to have been made by the assessee in purchase of land at Nasik. The Assessing Officer in this regard was of the view that the assessee has made the investment in the land out of the books of accounts and hence he added the amount of Rs.48,00,000 under Section 69 of the Act.

11. Before learned Commissioner (Appeals), the assessee pointed out that no incriminating material was found during the course of search which would show that the assessee has made any investment outside the books of accounts. In fact, the document which was relied upon by the Assessing Officer was a mere proposal for the purchase of alleged land and the proposal was never acted upon. The learned

authorized representative of the assessee also pointed out that even after search, no details of any land at Nasik has been found.

12. Considering the facts and circumstances of the case, the learned Commissioner (Appeals) allowed the claim of the assessee and observed as under:

"(i) It has been stated by A.O. in assessment order that assessee failed to prove the source of payment made in cash for purchase of land. Therefore, an addition of Rs. 48 lacs has been made u/s 69 of the 1.T. Act, as unexplained investment.

(ii) In the appellate proceedings, appellant submitted that during the assessment proceeding, the appellant vide letter dated 27.02.2014, submitted before the A.O. that the above document in Annexure- A-2 at page 34, contains only proposal for purchase of land being gut no. 941 (9 acres), 974 (2.5 acres), 975 (4.5 acres), 979/980, 981 (9 acres) total 25 acres. It was further submitted that no such land was actually purchased by the appellant, either during the F.Y. 2006-07 or in any other previous or subsequent year(s). In support thereof, the appellant submitted before the A.O., complete details of land purchased by the appellant during the F.Y. 2006-07 to F.Y. 2012-13 and also, provided copies of their sale deeds and treatment in the books of accounts. Based on this, it was submitted that since no such land was ever purchased, the question of alleging cash payment does not arise at all. Therefore, it is respectfully submitted that the appellant had successfully discharged the burden cast under section 69 of the Act. It is further submitted that the documents so seized, on the basis of which, the above addition is made, were only proposals for purchase of certain land and there was actually no purchase of that land by the appellant.

(iii) In the appellate proceedings, it has also been submitted by the appellant that no cheque payments have been made for the alleged deal shown in the loose paper, inventoried as Annexure-A-2 at page 34. Therefore, it is claimed that not a single payment has been made through cheque and therefore, question of payment of cash amount did not arise.

From the above, it is clear that the deal of purchase of the land in loose paper seized, has not taken place and therefore, there is no question of payment of cash for such alleged deal and it was only a proposal.

In view of the above, I hold that alleged investment is not made, since, transaction has not materialized. Accordingly, I agree with the argument of the appellant and therefore, findings of the A.O. are erroneous. Therefore, addition of Rs. 48,00,000/- made u/s 69 of the Act, as unexplained investment, is deleted."

13. Before us, learned counsel for the assessee reiterated the submissions made before the learned Commissioner (Appeals) and the learned CIT DR has relied upon the order of the Assessing Officer.

14. After considering the entire facts and circumstances of the case, we find no infirmity in the order of learned Commissioner (Appeals) and hence, the Revenue's appeal fails and dismissed on this ground also.

15. Now, we adjudicate the appeal of the assessee in ITA No.3360/Del/2016 for assessment year 2007-08.

16. The facts related to the issue raised by the assessee in its appeal are that the assessee has got sales-tax subsidy of Rs.32.91 crores under Package Scheme of Incentives (Maharashtra), 1993. For claiming this subsidy, the assessee filed an application of additional ground before the learned Commissioner (Appeals) for the first time. It is worthy tgo pointed out that the assessee has never claimed this subsidy by way of revised return or by in the return filed in response to the notice under Section 153A of the Act.

17. However, the assessee raised this claim for the first time before the learned Commissioner (Appeals) by way of an additional ground. The learned Commissioner (Appeals) straightway dismissed the additional ground as well s the documentary evidences submitted by the assessee with respect to the claim of subsidy. However, the learned Commissioner (Appeals) dismissed the additional ground raised by observing two things; (i) the assessee himself has treated such receipts as revenue receipts in earlier years and (ii) the thing is that the assessee has been failed to provide the working about the receipt of Rs.32.91 crores. The learned Commissioner (Appeals) in nut shell has observed as under:

"(iv) Further, during the appellate proceedings, the AR was asked to show as to how the subsidy amount has been accounted for in the books of accounts. However, it has been submitted by the AR that same has been claimed as exempt and sales have been made without charging/collecting sales tax from the customers/purchasers. Therefore, the amount of sales tax chargeable. But not charged and collected on exempt sales, is not accounted for neither in P & L a/c nor in the balance sheet. Therefore, the question of offering the alleged subsidy of Rs.32.91 crores doe4s not arise. Accordingly, in my considered opinion, this claim now made in the appellate proceedings for the first time, is not only imaginary one, but also false, as the income has not been affected/increased on account of such alleged subsidy. It will not be out of place to mention here that not a single entry, relating to the alleged claim, has been recorded in the regular books of accounts as:

1. Nothing has been mention in the final accounts and tax audit report (filed in Form 3 CD), and

2. AR failed to substantiate such claim in the appellate proceedings.

In view of the above, the additional ground, does not deserve to be admitted, as there is no merit in the alleged claim.

Accordingly, the additional ground is dismissed, as not admitted."

18. Aggrieved with the order of learned Commissioner (Appeals), assessee preferred the appeal before the Tribunal.

19. We have considered the rival submissions of both the sides and perused the material available on record. We observe that similar issue was raised by the assessee in assessment year 2006-07 and the Tribunal decided the issue against the assessee. The Co-ordinate Bench has not commented upon the merits of the issue involving rather held that since the Co-ordinate Bench has already quashed the assessment, the claim of the assessee is not maintainable.

20. Against the order of the Tribunal, assessee preferred appeal before the Hon'ble High Court and Hon'ble High Court has held that whether an assessee is allowed to make additional claim in an unabated assessment is a matter which requires consideration.

21. However, the learned counsel for the assessee pointed out that the year before the Bench is the case of abated assessment years. Since, incriminating material was found in respect of the impugned year which we are dealing with and hence the issue pending before the Hon'ble High Court is of some difference.

22. The learned counsel for the assessee drawn the attention of the Bench towards the judgment of Co-ordinate Bench in ITA No.5248/Del/2015 in the case of Jindal India Ltd.l vs. ACIT, copy of the judgment is placed in case law in paper book at page nos.208 to 222. In that case also, the Co-ordinate Bench has observed that it was a case of abated assessment years. The claim of the assessee with respect to the deduction of subsidy, being capital receipt is maintainable even the same has not been raised during assessment proceedings. Co-ordinate Bench of the Tribunal has held as under:

"22. We have given a thoughtful consideration to the orders of the authorities below. In so far as A.Y. 2009-10 is concerned, the only reason given by the learned Commissioner (Appeals) for not entertaining the claim of subsidy is that the same was claimed by way of a revised computation of income and is therefore, not allowable as per the decision of the Hon'ble Supreme Court in the case of Goetze India Ltd. (supra).

23. We are of the considered view that the CIT(A) grossly erred in not appreciating the decision of the Hon'ble Supreme Court in its true perspective. In the judgment itself the Hon'ble Supreme Court has categorically laid down that there is no fetter on the appellate authority to entertain such claim."

23. The Co-ordinate Bench has not only admitted the claim of the assessee but also allowed the claim of the assessee. However, that case was related to the subsidy in respect of West Bengal Incentive Scheme, 1999 and the present case is related to the Incentive Scheme of Maharashtra, 1993.

24. Considering the facts and circumstances of the case, we are of the view that the assessee is entitled to raise the issue of deduction of subsidy before the first appellate authority also because there cannot be any estoppels against the assessee, if an income is not taxable under the Income-Tax Act, 1961 rather than the same cannot be taxed merely because the assessee has offered the same misconception of law and facts. Therefore, we are of the considered view that the assessee can raise the claim of subsidy. So far as the issue whether the subsidy received by the assessee was a capital receipt or revenue receipts, the learned counsel for the assessee submitted as under:

"That preamble of the Scheme was to attract the under-developed and developing areas of the State. He further pointed out that Government of Maharashtra was giving package incentive scheme to the new units as well as the units who expanded substantially for developing the region of Maharashtra State. It was further submitted by the learned counsel for the assessee that incentive scheme was introduced in 1964 and was amended from time to time after conducting survey of the Maharashtra State from time to time. He pointed out that Government of Maharashtra has divided the entire state into five groups, namely, Group A, Group B, Group C, Group D and Group D+.

Thereafter, the learned counsel for the assessee also pointed out that the assessee has obtained a certificate of exemptions from sales tax dated 18.04.1996 from the Maharashtra Government under Notification No. FINC(I) 1993/Exemption/EC-3226 which certificate was valid for 11 years from 16.04.1996 to 15.04.2007. Thereafter the assessee has obtained another eligibility certificate from Government of Maharashtra vide the Notification FINC(I)1993/Exemption/EC-4491 28.12.2001. The same is reproduced as under: dated

"**Conditions**

(i) The holder of the Eligibility Certificate shall keep true and proper account of the value of raw materials purchased, finished goods manufactured/sold by the Eligible unit, raw material/finished goods returned with proper classification of both purchases as well as sales of Goods.

(ii)

(iii)

(iv)

.....

(ix) In case of breach of any of the conditions of this eligibility Certificate or in case Eligibility Certificate is found to have been issued on the basis of incorrect information furnished or untrue statement made either in the application for Eligibility Certificate or any subsequent proceedings of any nature whatsoever or if any misuse of this Eligibility Certificate towards evasion/or aiding or abetting at the evasion of Sales Tax/Central Sales Tax not legally claimable under the provisions of the 1993 Scheme by way of incentives is found/detected then this Eligibility Certificate shall stand revoked ab-initio, All the pecuniary benefits as may have been granted shall be withheld and liable to be cancelled and those availed of shall be repayable forthwith and liable to be recovered as arrears of land revenue together with interest at the rate of 20.5% p.a, or such higher rate as may be fixed by the Government or SICOM from the date of disbursement/availment till full realisation of the amount and expenses for recovery of the same

Certificate of Entitlement

(a) This Certificate & valid for the period from 16-4-1996 to 15-4-2007 and is liable to be cancelled with effect from the date of cancellation of the Eligibility Certificate referred to in para 2 above

(b) The Holder of this Certificate is entitled to claim exemption under the said Entry only in respect of its/his sales and purchases relating to the said Eligible Unit, effected during the period of validity of this Certificate.

(c)

(d) ....

(k) If the Holder of this Certificate contravenes any of the provisions of the Act of the Rules made thereunder or fails to use the goods in accordance with the terms of the declaration furnished by him or contravenes any of the conditions of this Certificate or the conditions of the said Entry, this Certificate shall be liable to be cancelled and on such cancellation or on cancellation under the circumstances referred to in condition (a) above, the exemption from tax under the said Entry shall not he admissible to him on his sales and or purchases" (emphasis supplied)

"ELIGIBILTY CERTIFICATE WITH REFERENCE NO. GIN(I)/1993/EXEMPTION/EC nn. 4491 dated 28.12.2001.

The Eligibility certificate under Para 3.12(b) of the 1993

Package Scheme of Incentives (hereinafter referred to as 'the 1993 Scheme is hereby issued to JINDAL POLYESTER LIMITED for additional Fixed Capital Investment of Rs

8719.00 lacs as detailed on pre-page made at 28 km Stone, Nashik-Igatpuri Road, NH-3, Village Mundegaon, Taluka: Igatpuri, Dist,: Nashik for manufacture of i) Polyester made at 28km Stone, Nashik-Igatpuri Road, NH-3, Village: Mundegaon, Taluka: Igatpuri, Dist,: Nashik for Chips-33000 TPA (Addl.), ii) Polypropylene Films (BOPP)-23000 TPA (Addl.), iii) Methanol Product-10860 TPA (Addl.).

Conditions

(i) The holder of the Eligibility Certificate shall keep true and proper account of the value of raw materials purchased, finished goods manufactured/sold by the Eligible unit, raw material/finished goods returned with proper classification of both purchases as well as sales of Goods....

(ii)

(iii)

(iv)

.....

(ix) In case of breach of any of the conditions of this eligibility Certificate or in case Eligibility Certificate is found to have been issued on the basis of incorrect information furnished or untrue statement made either in the application for Eligibility Certificate or any subsequent proceedings of any nature whatsoever or if any misuse of this Eligibility Certificate towards evasion/or aiding or abetting at the evasion of Sales Tax/Central Sales Tax not legally claimable under the provisions of the 1993 Scheme by way of incentives is found/detected then this Eligibility Certificate shall stand revoked ab-initio. All the pecuniary benefits as may have been granted shall be withheld and liable to be cancelled and those avalled of shall be repayable forthwith and liable to be recovered as arrears of land revenue together with interest at the rate of 20.5% p.a.or such higher rate as may be fixed by the Government or SICOM from the date of disbursement/availment till full realization of the amount and expenses for recovery of the same." (emphasis supplied),

On perusal of the aforesaid Eligibility Certificates issued to the appellant, it would be noticed that the industries of the appellant are located at Igatpuri of Nashik District and consequently, such industries are duly covered by the above stated Annexure to the Scheme, 1993. Further, eligibility to claim exemption was subject to fulfillment of various conditions as stipulated therein and violation of such conditions would result in revocation of the exemption and any benefit already availed was liable to be repaid.

Further, even the Scheme itself, at para 4.2. clearly provided that the incentive under the Scheme cannot be claimed unless the Eligible unit has complied with the

stipulation/conditions of the Eligibility Certificate as extracted hereunder:

"4.2. Claim for Incentive No right or claim for any incentive under the 1993 Scheme shall be deemed to have been conferred by the 1993 Scheme merely because the Unit has fulfilled the conditions of the 1993 Scheme. The incentives under the 1993 Scheme cannot be claimed unless an EC has been issued under the 1993 Scheme by the Implementing Agency and the Eligible Unit has complied with the stipulations/conditions of the EC (emphasis supplied)

In view of the aforesaid, the appellant, in the invoices issued, did not charge any sales tax from its customers but clearly stated that "The sale is exempted from tax under the provisions of entry no, 136 of the schedule appended to the government notification" On perusal of the above scheme and certificates, it may be noted that in order to attract entrepreneurs to set manufacturing base in Nasik and other areas, from 1993 onwards, such areas were classified and notified as a backward area and complete exemption from sales tax was given to newly set up units in that area. This led to tremendous industrial development in these areas which further strengthens the view that the Government of Maharashtra introduced the Incentive Scheme in the form of exemption of sales tax to industries for industrial development of the notified developing and underdeveloped parts of the State. Further, as demonstrated above, the objectives of the State Government were, inter alia, to achieve (a) enhanced industrialization, (b) increased production; (b) improvisation of infrastructure facilities: (c) creation of employment, (d) acceleration of pace of industrial development, etc., which are matters of public interest.

It is thus emphatically submitted that the purpose granting exemption from sales tax for a fixed period of time was clearly to provide incentive for establishment of new industries in the underdeveloped regions specified in the scheme. The intention was not to increase the profitability of the eligible units but to promote development of industry and infrastructure in the region. In view of the aforesaid, the incentive received by the appellant was capital receipt not liable to tax."

25. Learned counsel appearing for the assessee also pointed out that Special Bench of the ITAT in case of Indo Rama Synthetics (1) Ltd. Vs. ACIT: ITA No.2002/Del/2008 dated 22.06.2012 as under:

"Lastly, the learned counsel for the assessee submitted that similar scheme of sales-tax subsidy was exempt by the decision of the Special Bench of the Tribunal in the case of Indo Rama Synthentics Pvt. Ltd. in ITA No.2002/Del/2008 dated 22.06.2012 wherein the Hon'ble Bench has observed as under:

"Specific reliance is placed, Delhi Bench of the Tribunal 1, in this regard, on the decision of the in the case Rama Synthetics ((1) Ltd. V. ACIT: ITA No. 2002/D/2008 (rendered on

22.6.2012), wherein, while following the decision of the Special Bench of the Tribunal in the case of Reliance Industries (supra), sales-tax subsidy, by way of exemption, given by the Government of Maharashtra under PSI 1993, has been held to be capital receipt not exigible to tax. The aforesaid Scheme, akin to the PSI, 1979, is a predecessor of the Scheme under which the assessee company has been granted incentives. The relevant observations of the Tribunal are as under:

"……

We have heard the rival contentions in light of the material produced and precedents relied upon. We find that Ld. CIT(A) has given a finding that issue in dispute was covered by the Special Bench decision of the Tribunal in the case of Reliance Industries Ltd. (Supra). Though the scheme applicable in the case of Reliance Industries Ltd. was 1979 scheme, however, in the 1993 scheme terms and conditions were of the same nature and intent. For this purpose, a comparative chart was referred by the Ld. CIT(A). As per the comparative chart the terms and conditions applicable in 1979 scheme were of the same nature and intent of the 1993 scheme. We further note that Mumbai Tribunal in the case of Everest Industries Ltd., in ITA No. 814/Mum/2007 has held that salient features of the 1993 scheme are identical to that of 1979 scheme. We further note that the Tribunal in ITA No. 678 & 679/Del/2012 in the case of M/s Indo Rama Textiles Ltd. on identical facts has held that the decision of the Mumbai Tribunal, Special Bench in the case of Reliance Industries 88 ITD 273 is applicable. Accordingly, in the background of the aforesaid discussion and precedents, we hold that that the Ld. CIT(A) has passed a reasonable order which does not need any interference on our part. Accordingly, we uphold the same." (emphasis supplied).

The aforesaid decision of the Tribunal has been recently confirmed by the Delhi High Court titled as CIT V. Mis. Indo Rama Synthetics (1) Lid: (2024) 337 CTR (Del) 139, by observing as under:

"25. At the risk of repetition, it must be stated that the sole purpose of the 1993 Scheme was to set up new units and/or expand existing units in underdeveloped and developing areas, an aspect which also emerges on perusal of classification of areas given in paragraph 1.3 of the 1993 Scheme."

26. Learned Departmental Representative relied upon the orders of the authorities below and contended that assessee is not entitled for raising the claim before the learned Commissioner (Appeals). However, she could not be able to controvert the facts and decision of Co-ordinate Bench where similar issue has been decided in the case of sister concern of the assessee.

27. After considering the submissions of both the sides and perusing the material available on record and considering the case laws on the subject and also going

through the Incentive Scheme of the State of Maharashtra and the purpose of the Scheme and also considering the judgment of Indo Rama (supra), we are of the firm view that subsidy received by the assessee was a capital receipt and hence the assessee's claim is allowed. However, the assessee has not provided the working of the quantum of the subsidy arrived in its books of account so we restore the matter back to the file of the Assessing Officer for quantifying the exact amount of the subsidy after calling replies from the assessee and supportive documents in this regard. In other words, the issue of exemption of sales-tax subsidy has been principally accepted to be termed as capital receipts but for the limited purposes for the quantification of the figures, the matter is restored to the Assessing Officer.

ITA No.3365/Del/2016:

28. This is an appeal of the Revenue against the order of learned Commissioner (Appeals) dated 21.03.2016 and relates to assessment year 2008-09.

29. Solitary ground of appeal raised by the Revenue relating to the deletion of addition of Rs.2,19,08,245. The assessee has claimed this amount as payments made to contractors for loading and unloading and packing. Similar issue has been decided by us in ITA No.3364/Del/2016. The findings given above for assessment year 2007-08 would apply mutatis mutandis here also. The appeal of the Revenue is dismissed.

ITA Nos. 3361/Del/2016 & Ors.:

30. This is the appeal of the assessee arising from the order of learned Commissioner (Appeals) dated 21.03.2016 and relates to assessment year 2008-09. The assessee has raised around 10 grounds, however, issues for the consideration of this Bench can be categorized as (a)entitlement of the assessee for exemption of sales-tax subsidy; (b) disallowance of expenses by invoking the provisions of section 14A read with Rule 8D of the Act.

31. So far as the issue of entitlement of the assessee for claiming exemption of sales-tax subsidy is concerned, we have already decided this issue in ITA No.3360/Del/2016 for assessment year 2007-08. The findings given for that year would apply mutatis mutandis here also. This issue is decided accordingly.

32. So far as the disallowance mad under Section 14A read with Rule 8D of the Act is concerned, the contention of the assessee is that own funds of the assessee were sufficient for making tax free investments and hence, no disallowance would have been made by the department in view of the recent judgment of the Hon'ble Gujarat High Court in CIT Vs. UTI Bank Ltd. - 32 taxmann.com 370 wherein the Hon'ble Gujarat High Court has held that where the assessee has sufficient own funds then provisions of section 14A of the Act cannot be invoked.

33. Learned counsel appearing for the assessee further informed that SLP against this judgment of Hon'ble Gujarat High Court has also been dismissed by the Hon'ble Apex Court in Civil Appeal No.468/2014.

34. Second argument of the assessee is that Rule 8D and 14A provisions are only invokeable in respect of those investments from which the assessee has earned dividend. For this proposition, learned authorized representative of the assessee relied upon the judgment of ACB India Ltd. vs. ACIT reported in 374 ITR 108 (Del.).

35. Learned CIT DR relied upon the orders of the authorities below.

36. Considering the rival submissions, we restore the issue to the file of the Assessing Officer for examining the position of own funds and if the assessee was in possession of own funds then the Assessing Officer will decide the issue as per the judgment of Hon'ble Gujarat High Court in CIT vs. UTI Ltd. (supra). Alternatively, the Assessing Officer will also examine the contentions of the assessee relating to the restrictions of disallowance in respect of only those investments which yield dividends. All ground raised in the appeal of the assessee pertaining to these two issues are decided accordingly in nut shell. The appeal is allowed for statistical purposes as indicated above.

ITA No. 5839/Del/2016 (Assessment year: 2009-10):

37. This is the appeal of the Revenue arising from the order of learned Commissioner (Appeals) dated 28th July 2016 and relates to assessment year 2009-10.

38. The first ground of appeal related to the deletion of Rs.4,82,42,301 on account of payments made to contractors for loading, unloading and packaging.

39. Learned CIT DR has relied upon the order of the Assessing Officer and the counsel for the assessee reiterated the submissions made before the learned Commissioner (Appeals).

40. After considering the rival submissions, we found that this issue is already decided by us in ITA No.3364/Del/2016 for assessment year 2007-08 and findings given in respect of that year in this order would apply mutatis mutandis here also.

41. The second and third ground of the Revenue's appeal is related to the relief granted by learned Commissioner (Appeals) vis-à-vis expenses disallowed by Assessing Officer in terms of section 14A read with Rule 8D of the Act.

42. During the course of assessment proceedings, it has been observed by the Assessing Officer that the assessee has incurred expenses in respect of investments in shares and securities. However, the assessee has not disallowed any expense related to those investments which yield tax free income. Before, the Assessing Officer, the

learned authorized representative of the assessee argued that no direct or indirect expenditure has been incurred in respect of investment made in mutual funds etc. The Assessing Officer did not find force in the arguments of the assessee and made a disallowance of Rs.1,01,37,668.

43. Aggrieved with the order of the Assessing Officer, the assessee filed an appeal before the learned Commissioner (Appeals) and argued that disallowance made by the Assessing Officer by invoking section 14A read with Rule 8D is unwarranted for the following reasons:

a) There was no proximate nexus between the expenses incurred and interest free income earned.

b) Own funds of the assessee were sufficient to make the investment yielding dividend income and hence, no disallowance could be made.

c) Learned authorized representative argued that investment in growth mutual funds is outside the purview of section 14A because these mutual funds would not earned any dividend income.

44. After considering the facts of the case, the learned Commissioner (Appeals) partly allowed the appeal of the assessee and directed the Assessing Officer to exclude the investments made in growth investment, mutual funds from the ambit of section 14A of the Act.

45. Aggrieved with the order of learned Commissioner (Appeals), the Revenue as well as the assessee both came up in appeal before us. The appeal of the assessee for the same year is decided hereunder separately.

46. After considering the rival submissions of both side, we are of the view that the issue of 14A may be restored to the Assessing Officer for examining afresh in the light of the settled position of law as discussed hereinabove. Needless to say that the Assessing Officer will afford reasonable opportunity to the assessee accordingly.

ITA No.5645/Del/2016 (Assessment year 2009-10):

47. This is the appeal of the assessee for assessment year 2009-10. In ground no.1 to 1.2, the assessee has contended the issue of exemption of sales-tax subsidy.

48. We have already decided this issue in ITA No.3360/Del/2016 for assessment year 2007-08(supra).

49. The findings given in respect of assessment year 2007-08, as mentioned above in this order, would apply mutatis mutandis here also.

50. In ground no.2 to 2.1, the assessee has challenged the disallowance made by the Assessing Officer by invoking the provisions of section 14A read with Rule 8D of the Act.

51. In Revenue's appeal for the same assessment year, we deem it proper to restore this issue to the file of the Assessing Officer for deciding afresh as per law after providing reasonable opportunity to the assessee.

52. In the result, appeals of the assessee for assessment years 2007-08, 2008-09 and 2009-10 are allowed as indicated hereinabove and that of the Revenue for assessment years 2007-08 and 2008-09 are dismissed. Appeal of the Revenue for assessment year 2009-10 is partly allowed for statistical purposes. We order accordingly.