

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI KULDIP SINGH, JM

ITA No.84/Mum/2023

(Assessment Year: 2009-10)

Dy. Commissioner of Income-tax
Central Circle 1(4),
9th For, 902, Pratishta Bhavan,
Old C.G.O. Bldg., (Annexe),
M.K. Road, Mumbai-400 020

(Appellant)**PAN No. AAAC11747H**

M/s Grasim Industries Ltd.
(Successor to Aditya Birla
Nuvo Ltd0

Vs. Aditya Birla Centre, A0Wing,
2nd Floor, Ahire Marg, Worli,
Mumbai-400 030

(Respondent)**ITA No.356/Mum/2023**

(Assessment Year: 2009-10)

M/s Grasim Industries Ltd.
(Successor to Aditya Birla
Nuvo Ltd0
Aditya Birla Centre, A0Wing,
2nd Floor, Ahire Marg, Worli,
Mumbai-400 030

(Appellant)**PAN No. AAAC11747H**

Dy. Commissioner of Income-tax
Central Circle 1(4),
9th Flr, 902, Pratishta Bhavan,
Old C.G.O. Bldg., (Annexe),
M.K. Road, Mumbai-400 020

(Respondent)**Assessee by**: Shri Yogesh Thar &
Ms. Ayushi Modani, ARs**Revenue by**

: Shri Dr. Kishor Dhule, CIT DR

Date of hearing: 29.05.2023**Date of pronouncement :** 12.06.2023**ORDER****PER PRASHANT MAHARISHI, AM:**

01. The Deputy Commissioner of income tax, Central Circle – 1 (4), Mumbai (the learned AO) has preferred this appeal against the appellate order passed by the Commissioner of income tax (appeals), Mumbai – 47, Mumbai (the learned CIT – A) dated 3/11/2022 for assessment year 2009 – 10 raising following grounds of appeal:-

Revenue's Ground of appeal in ITA No. 84/Mum/2023:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in allowing the appeal of the assessee on account of interest subsidy received under Technology Upgradation Fund Scheme of Rs.8,34,26,992/- without appreciating that the department had not accepted the ITAT decision in earlier years and further appeal was filed in A.Y.2010-11, ITXA NO. 1785/2022.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in allowing the appeal of the assessee on account of interest subsidy received under Technology Upgradation Fund Rs.8,34,26,992/- as the AO has not allowed the claim of the assessee following the decision of Hon'ble Apex Court in the case of M/s Goetz India Ltd Vs CIT reported in 284 ITR 323(SC)."

02. Assessee has also filed cross objection No. 356/Mum/2023 wherein it has raised following grounds:-

"The Appellant prefers an appeal against the order of the learned Commissioner of Income Tax (Appeals) - 47 [hereinafter referred as 'CIT(A)'] dated 03-11-

2022 on the following grounds, each of which is without prejudice to the other.

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not directing the learned AO to consider correct amount of subsidy under Technology Upgradation Fund Scheme (TUF subsidy) amounting to Rs. 16,01,36,572/- as against Rs. 8,34,26,992/-.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not directing the learned AO to reduce TUF subsidy of Rs. 16,01,36,572/-, being a capital receipt, from Profit as shown in the statement of profit and loss, while computing book profit u/s 115JB of the Income-tax Act, 1961.

3. On the facts and the circumstances of the case and in law, the learned CIT(A) erred in not admitting the ground of appeal and ought to have directed the learned AO to treat the incentives under Focus Market Scheme amounting to Rs. 13,16,569/- as capital receipt not chargeable to tax.

4. On the facts and the circumstances of the case and in law, the learned CIT(A) erred in not admitting the ground of appeal and ought to have directed the learned AO to exclude incentives under Focus Market Scheme of Rs. 13,16,569/-, being a capital receipt, from Profit as shown in the statement of profit and loss, while computing book profit u/s 115JB of the Income-tax Act, 1961.”



03. Facts of the case shows that assessee is a company engaged in diverse the business such as garments, insulators, fertilisers, viz cost element young, financial services et cetera at a different units located across the country. It filed its return of income on 29/9/2009 declaring a total income of ₹ 2,025,938,044/- as per name of provisions of the income tax act 1961 (the act) and book profit of ₹ 1,623,088,137/- under section 115JB of the act. This was revised on 30 March 2011 at a total income of ₹ 1,974,992,774/- as per normal computation of total income and book profit was computed at ₹ 1,623,088,137/-. The return of income was picked up for scrutiny. The learned assessing officer passed an assessment order under section 143 (3) of the act determining total income of the assessee at ₹ 2,286,072,210 as per the normal provisions of the act and book profit remains the same. Against this assessment order the assessee preferred an appeal before the Commissioner of income tax (appeals) large taxpayer unit, Mumbai which was disposed of as per order dated 24 January 2014. Against this the assessee preferred an appeal before the coordinate bench on 21st/1/2014 which was disposed of on 20 December 2019. The coordinate bench restored the certain issues to the file of the learned assessing officer. Against this the learned assessing officer framed the assessment once again on 17 June 2021 under section 143 (3) read with section 254 of the act partly rejecting the claim of the assessee. The impugned appellate order challenged by the revenue is passed

against that assessment order. The main issue in the assessment was whether the subsidy received by the assessee for technology upgradation fund amounting to ₹ 83,426,992/- is capital receipt not chargeable to tax or revenue receipt chargeable to tax. The learned assessing officer considered it as a revenue receipt. On appeal before the learned CIT – A as per ground number 2, after considering the submission of the assessee found that coordinate bench in ITA number 4220 and 4704/M/2015 dated 24/2/2020 in assessee's own case has held that subsidy received by the appellant company under technology upgradation fund scheme is a capital receipt. This decision was arrived at by the coordinate bench after relying on the decision of honourable Rajasthan High Court in case of principal Commissioner of income tax versus Nitin spinners Ltd and of honourable Calcutta High Court in case of CIT versus Gloucester jute Mills Ltd. The learned AO is aggrieved with the order of the learned CIT – A and therefore has challenged this decision of the learned CIT – A as per ground number 1 and 2 of the appeal.

04. The learned departmental representative vehemently contested the issue and submitted that while filing the return of income assessee company offered the subsidy as taxable income and now before the tribunal the assessee raised this ground. The additional ground raised was admitted by the coordinate bench and remitted back to the file of AO. He referred to the paragraph number 6.2 of the order of the learned AO stating that assessee has not filed any revised return and therefore the AO was correct

in rejecting the claim. The another reason was that the main intention of the technology upgradation fund scheme was to actually set of and is out the interest burden of the assessee company. The assessee has reduced the interest subsidy from the interest paid on various loans and therefore the interest income and interest expenditure both were treated as revenue expenditure and therefore the interest subsidy on technology upgradation fund was treated by the assessee itself as revenue expenditure. He further referred to the purpose of the subsidy which is a reimbursement to the assessee making actual interest expenditure. He further submitted that these subsidies have not been granted specifically against purchase of any capital asset and therefore since the purpose has been to compensate the competitive disadvantage of the business concern such subsidy falls in the realm of revenue. The learned departmental representative relied upon the decision of the honourable Supreme Court in 228 ITR 253 and submitted that the nature of subsidy clearly appears to be of revenue in nature. The learned departmental representative also pressed into service the explanation 10 of section 43 (1) of the act.

05. The learned authorised representative submitted that this issue is squarely covered in favour of the assessee by the decision of the coordinate bench in ITA number 4 to 20/M/2015 for assessment year 2010 - 11 dated 24/2/2020 in case of the assessee and in ITA number 6360 and 6361 for assessment year 2013 - 14 and 2014 - 15 by order dated 10/9/2020 in case of orbit exports Ltd.

This decision has been rendered by following the decision of the honourable Rajasthan High Court as well as honourable Calcutta High Court. Further with respect to the applicability of explanation 10 of section 43 (1) of the act he referred to paragraph number 2 of the order in case of orbit export where these particular provision was considered and decided in paragraph number 3.

06. We have carefully considered the rival contention and perused the orders of the lower authorities as well as the decision of the coordinate bench. During the course of hearing before the coordinate bench in ITA number 2525/M/2014 for assessment year 2009 – 10, assessee raised an additional ground stating that interest subsidy received under technology upgradation fund scheme amounting to ₹ 83,426,992/- is revenue receipt. The coordinate bench as per paragraph number 12 of that decision remanded back this issue to the file of the learned assessing officer for de novo adjudication in accordance with the law. This decision was arrived at by in the earlier years also this issue was remanded back to the file of the learned assessing officer. Therefore based on this the learned AO proceeded to examine the claim of the assessee that whether the interest subsidy received under technology upgradation fund scheme is revenue receipt or capital receipt. It is also to be noted that assessee itself has reduced the above subsidy from the interest expenditure debited to the profit and loss account. Thus, assessee itself treated it as a revenue income and not capital expenditure. However in assessee's own case in

ITA number 4220 and 4704/M/2014 dated 24/2/2020 it has been held that the subsidy received by the appellant company under technology upgradation fund scheme is capital receipt. The coordinate bench held as under:-

"8. Ground No. 11:

11. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing to treat the interest subsidy of ₹ 15,23,25,727/- as capital in nature."

38.1 In ground No.11 the Revenue has assailed the findings of CIT(A) in holding interest subsidy from Technology Up gradation Fund(TUF) ₹ 15,23,25,727/- as capital in nature. The Id. Authorized Representative for the assessee submitted that the Hon'ble Rajasthan High Court in the case of PCIT vs. Nitin Spinners Ltd. in DB Income Tax appeal No.31/2019 decided on 19/09/2019 has held subsidy received under TUF as capital in nature. Similar view has been taken by Mumbai Tribunal in the case of ACIT vs. SVG Fashions Ltd. in ITA No.704/Mum/2016 for assessment year 2012-13 decided on 17/07/2018. The Id. Authorized Representative for the assessee to further buttress his submissions placed reliance on the following decisions:-

(1) CIT vs. Gloster Jute Mills Ltd. ,96 taxmann.com 303 (Cal)

(2) CIT vs. Sshyam Lal Bansal, 200 Taxman 14 (P&H)

38.2 The Id. Authorized Representative for the assessee further submitted that CIT(A) has decided this issue after seeking remand report of Assessing Officer and examining TUF scheme in details. The Id. Authorized Representative for the assessee further submitted that the Tribunal in assessee's appeal for assessment year 2009-10 (supra) has admitted this issue raised in additional ground of appeal and has restored to Assessing Officer for fresh adjudication.

39. The Id. Departmental Representative submitted that the issue may be restored to Assessing Officer for reconsideration in line with Tribunal order in assessee's appeal for Assessment Year 2009-10.

40. Both sides heard. The assessee has received subsidy under TUF scheme. The assessee has claimed the subsidy as capital receipt, whereas, the Department treated the subsidy as Revenue in nature. We find that the Hon'ble Rajasthan High Court in the case of PCIT vs. Nitin Spinners Ltd.(supra) examined the scheme in the light of various decisions and held the subsidy under TUF scheme as capital in nature. Similar view has been taken by the Hon'ble Calcutta High Court in the case of CIT vs. Gloster Jute Mills Ltd.(supra). Thus, in view of above judgements of Hon'ble High Courts, we see



no infirmity in the findings of CIT(A). The same are upheld and ground No.11 of the appeal is dismissed.

41. In the result, appeal of the Revenue is partly allowed for statistical purpose.”

07. Therefore in view of the above decision of the coordinate bench the issue is squarely covered in favour of the assessee wherein it has been held that interest subsidy received under technology upgradation fund scheme, though credited in the net off against the interest expenditure in the books of account is still capital in nature and therefore not chargeable to tax. Further the argument of the learned departmental representative has also been negated about the applicability of explanation 10 to section 43 (1) of the act by the decision of the coordinate bench in case of orbit exports (supra). In view of this both the grounds of appeal raised by the learned assessing officer are dismissed.
08. Assessee does not want to press the cross objection, and therefore same are also dismissed.
09. In the result, appeal of the learned AO as well as the cross objections filed by the assessee are dismissed.

Order pronounced in the open court 12.06.2023.

Sd/-
(KULDIP SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)



Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai