
(2014) 03 RAJ CK 0148
In the Rajasthan High Court
Case No : IT Appeal No. 144 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Samta Chavigrah

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Citation : (2014) 268 CTR 199

Hon'ble Judges : Dinesh Maheshwari, J; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : K.K. Bissa, Advocate for the Appellant; Anjay Kothari, Advocate for the Respondent

Judgement

Dinesh Maheshwari, J.—This appeal by the Revenue against the order dt. 21st Feb., 2007 passed by the income tax Appellate Tribunal, Jodhpur Bench, Jodhpur ("Tribunal") in relation to the asst. yr. 2000-01 has been admitted for consideration on the following substantial question of law:

Whether on the facts and in the circumstances of the case as well as in the law the learned Tribunal was justified in confirming the order of the learned Tribunal deleting the addition of Rs. 9,13,143 made on account of disallowance of entertainment tax capitalised as subsidy ignoring the facts of the cases of M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad, and Commissioner of Income Tax Vs. Rajaram Maize Products,

The question aforesaid has arisen on and in the following facts and circumstances: While conducting assessment proceedings in relation to the respondent-assessee, the A.O. observed that the assessee firm, running a cinema talkies in the name of Samta Chavigrah at Pratapgarh, had shown receipts of Rs. 18,26,286, which included entertainment tax of Rs. 9,13,143; and after showing total receipts of Rs. 18,26,286 in the P & L a/c, the assessee had transferred Rs. 9,13,143 to entertainment subsidy account and thereby, had

shown only the receipts of Rs. 9,13,143 during the relevant period. The A.O. wanted to know the nature of this subsidy and also a justification for the assessee's claim of this amount as deduction. The assessee explained that there was a scheme of the Government of Rajasthan to encourage construction of new cinema halls by providing such a subsidy in the form of entertainment tax for a particular period. A copy of notification issued in this regard was placed before the A.O. But the A.O. did not agree with the assessee and treated this amount as its income. The CIT(A), however, accepted the plea of the assessee after relying, inter alia, on the State Government's notification and on the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd., ; and deleted the entire addition by treating the entertainment subsidy as a capital receipt because this amount had been credited in the books of accounts of the assessee as a liability under the head "Capital subsidy".

2. The Tribunal endorsed the views of the CIT(A) while observing that the impugned amount being that of grant-in-aid, was required to be treated as a capital receipt. The Tribunal examined the exemption notification issued under the Rajasthan Entertainments and Advertisements Tax Act, 1957 ("the Act of 1957") and held as under:

13.....As per this notification, the assessee is not required to pay any entertainment tax for first five years. Any amount collected under the head entertainment tax and additional tax collected by him, from the date of exhibition of picture in newly constructed cinema house, would amount to subsidy paid by the State Government. This amount has to be treated as a liability being capital subsidy reserve. This amount is not required to be deposited for a period of five years and actually this is a sort of a subsidy, which is to be treated as a capital reserve. The remission for new cinema for remitting entertainment tax payable to new cinema house under construction was formulated by the State Government to assist the assessee for expenditure actually incurred in the construction of a new cinema house for the growth of new cinema building in the public interest without any object of supplementing the trade receipts. The remission has been granted by way of incentive of capital receipts in the construction of new cinema building. The purpose and object of the scheme is very clear and for which certain conditions are imposed upon the cinema owners. Like that remission is not an income but a liability attached to it on happening of a certain contingency and which is a liability and not income. In the given case, the assessee has been collecting the entertainment tax and keeping the same as per the scheme and has been running the cinema for the last five years continuously. The impugned amount has been credited in the books of accounts of the assessee as a liability under the head "Capital subsidy reserve". Obviously, a grant-in-aid has to be treated as a capital receipt, even if it is given after the business has been set up. This was precisely held by the Hon'ble Allahabad High Court in the case of Kalpana Palace Vs. Commissioner of Income Tax, , a case which has also been relied by the learned CIT(A). In our considered opinion, the

A.O. is not correct in treating the entertainment subsidy in question as a revenue receipt and therefore, the learned CIT(A) is justified completely in deleting the entire addition. In this way ground No. 2 of Revenue's appeal also fails.

3. In challenge to the order aforesaid, it has strenuously been contended on behalf of the Revenue that in view of the pronouncement of the Hon'ble Supreme Court in the cases of M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad, and Commissioner of Income Tax Vs. Rajaram Maize Products, , the findings recorded by the CIT(A) and Tribunal are erroneous and the appellate authorities have erred in deleting the addition of Rs. 9,13,143. It is contended that collection of entertainment tax was optional for the assessee particularly when the exemption had been granted but when the same had indeed been collected, it formed the part of the receipts and could not have been allowed as capital subsidy.

4. Per contra, the learned counsel for the assessee has argued that when the financial assistance was given by the Government for the purpose of construction and establishment of new cinema hall, may be in the form of exemption from depositing entertainment tax, it remained nevertheless a capital receipt and could not have been subjected to the tax as a revenue receipt. The learned counsel has submitted that the ratio of the referred decision in Sahney Steel & Press Works Ltd. (supra) does not operate against the claim of the assessee. The learned counsel has referred to the decision of the Hon'ble Supreme Court in Commissioner of Income Tax, Madras Vs. Ponni Sugars and Chemicals Ltd., ; and has also referred to the decisions in The Commissioner of Income Tax - 1, Kolhapur Vs. M/s. Chaphalkar Brothers, Pune, ; D.C.I.T. - Circle 1(2) - Baroda Vs. Inox Leisure Ltd., ; and Kalpana Palace Vs. Commissioner of Income Tax, in support of his contentions.

5. Having given thoughtful consideration to the rival submissions and having examined the record, we find nothing of error or illegality on the part of the appellate authorities in allowing the questioned amount as capital subsidy; and we are clearly of the view that formulated question deserves to be answered in favour of assessee.

6. It is noticed that in the scheme of the Act of 1957, the levy of entertainment tax is prescribed in sub-s. (1) of s. 4 thereof, which is on payment for admission to an entertainment. The said provision reads as under:

4. Levy of tax on payment for admission.--(1) There shall be levied, charged and paid to the State Government on all payments for admission to an entertainment, a tax at such rate not exceeding (100 per cent) of the payment for admission, as may be notified by the State Government from time to time (subject to a minimum of five paise in any one case, the amount of tax wherever necessary shall be rounded off to the nearest multiple of five paise. fractions of two and half paise or more being counted as five paise, and less than two and

half paise being ignored.

7. The manner of payment of tax has been specified in s. 5 of the Act of 1957, which reads as under:

5. Manner of payment of tax.--(1) Subject to other provisions of this Act, the entertainment tax shall be levied in respect of each person admitted on payment and shall be calculated and paid on the number of admission.

(2) The entertainment tax shall be due and recoverable from the proprietor.

(3) The proprietor shall submit such returns relating to payments for admission to an entertainment to such authority, in such manner and within such period as may be prescribed.

8. It is clear that the entertainment tax is to be paid to the State Government, on all payments for admission to an entertainment at the prescribed rate: and is levied in respect of each person admitted on payment and is to be collected and paid on the number of admissions. The entertainment tax is due and recoverable from the proprietor, who is essentially the owner of the particular entertainment or who may be incharge of the management, as per cl. (8) of s. 3 of the Act of 1957.

9. However, under sub-s. (2) of s. 7 of the Act of 1957, on being satisfied about existence of reasonable ground for doing so in the public interest, the State Government may, by general or special order notified in the Official Gazette, reduce or remit the entertainment tax with which any entertainment or class of entertainments is chargeable. While exercising such powers, the State Government issued the exemption notification in question on 15th March, 1996 in SO No. 293 that reads as under:

S.O. 293.--In exercise of the powers conferred by sub-s. (2) of s. 7 of the Rajasthan Entertainments & Advertisements Tax Act, 1957 (Rajasthan Act No. 24 of 1957), the State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts entertainment tax (including additional entertainment tax) for a period of five year, payable by a new cinema hall constructed subject to the condition that commercial exhibition of films in such cinema hall should start upto 31st March, 2000.

10. The principles for finding out as to whether a particular income in the form of subsidy is to be treated as capital or revenue receipt have been enunciated by the Hon'ble Supreme Court in the case of Ponni Sugars & Chemicals Ltd. (supra) in the following:

14.....The importance of the judgment of this Court in Sahney Steel case (supra) lies in the fact that it has discussed and analysed the entire case law and it has laid down the basic test to be applied in judging the character of a subsidy. That test is that the character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In

other words, in such cases, one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. The source is immaterial. The form of subsidy is immaterial. The main eligibility condition in the scheme with which we are concerned in this case is that the incentive must be utilized for repayment of loans taken by the assessee to set up new units or for substantial expansion of existing units. On this aspect there is no dispute. If the object of the subsidy scheme was 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 was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account. Therefore, it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form of the mechanism through which the subsidy is given is irrelevant.

11. In *Kalpna Palace* (supra), the grant by the State Government had been to promote construction of cinema buildings in smaller towns and the grant related to the amount of entertainment tax even after the business had been set up. The Hon"ble Allahabad High Court found it to be a capital receipt and said:

8. Applying the principles laid down by the apex Court in the aforementioned case to the facts of the present case, we find that grant-in-aid was given in order to promote construction of cinema buildings in the small towns having population upto one lakh according to 1981 census. Thus, it was for the establishment/setting up of cinema halls and the manner in which the grant-in-aid related to the amount of entertainment tax is of no consequence. Thus, even though grant-in-aid was given after the business has been set up, it would still be relatable to the construction of cinema halls. Thus, it would be a capital receipt.

12. In the case of *Inox Leisure Ltd.* (supra), the Hon"ble Gujarat High Court concluded that the entertainment tax exemption enabling the assessee to set up a new unit or to expand the existing unit was a capital receipt. In the case of *Chophalkar Brothers* (supra), the Hon"ble Bombay High Court observed that the purpose for which subsidy was given was the relevant factor for determining whether the same was capital or revenue receipt irrespective of the fact that the multiplexes were constructed out of own funds or borrowed the funds. The Hon"ble Court said:

5. Since the object of subsidy was to promote construction of multiplex theatre complexes, in our opinion, receipt of subsidy would be on capital account. The fact that the subsidy was not meant for repaying the loan taken for construction of multiplexes cannot be a ground to hold that subsidy receipt was on revenue account, because, if the object of the scheme was to promote cinema houses by constructing multiplex theatres, then irrespective of the fact that the multiplexes have been constructed out of own funds or borrowed funds, the receipt of subsidy would be on capital account. In the light of the aforesaid objects of the scheme framed by the State Government, the decision of the Tribunal that the amount of subsidy received by the assessee is on capital account cannot be

faulted. Accordingly, both the appeals are dismissed with no order as to costs.

13. In *Sahney Steel & Press Works Ltd.* (supra), subsidies were found to have been granted only for the purpose of carrying on business of the assessee and not for the purpose of bringing into existence any new assets and hence, the Hon'ble Supreme Court observed,--

13. In the case before us, 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.....

14. It is noticed that the case of *Rajaram Maize Products* (supra) as referred in the formulated question had been from Madhya Pradesh but the referred decision had been of the Hon'ble Supreme Court in *Commissioner of Income Tax Vs. Rajaram Maize Products*, wherein, the principles in *Sahney Steel & Press Works Ltd.* (supra) were referred and it was found that the power subsidies were of revenue nature and had to be taxed accordingly.

15. In the present case, it is more than apparent that the State Government proceeded to exempt entertainment tax for a period of 5 years payable by a "new" cinema hall constructed, subject to the condition that commercial exhibition of films in such cinema hall was required to be started by 31st March, 2000. In the scheme of the Act of 1957, where entertainment tax is determined and recoverable from the proprietor of the entertainment and is levied with reference to the number of admissions to the entertainment, when the State Government had exempted such proprietor of new cinema hall from payment of entertainment tax on the given condition, in our view, the object was clearly to promote the construction of new cinema halls. Merely because the amount was not directly meant for repaying the amount taken for construction of the cinema hall, its purpose could not be considered to be other than that of promoting construction of new cinema hall. As held consistently by the Courts, the source of funds for construction of such cinema hall is irrelevant; and it would also not matter if the grant would be available after the business has been set up.

16. In our view, in the totality of the circumstances; and particularly looking to the scheme of the Act of 1957 as also the object and purport of the exemption notification, the assistance in question cannot be said to be an operational subsidy so as to be taken as a revenue receipt. We find correct the observations by Tribunal that the remission had been granted by way of incentive of capital receipts in the construction of cinema building.

17. The submission that once the assessee has collected the entertainment tax from the persons admitted to the entertainment and has not deposited the same with the Government, it is required to be treated as revenue receipt remains devoid of substance. The remission by the Government had been to the proprietor of the entertainment and not to the person admitted to the

entertainment. The remission had been the methodology adopted by the State Government to provide assistance to the new cinema hall; and had been essentially in the nature of a subsidy, i.e., the assistance from the Government to the new cinema hall. The principles in the referred decisions of the Hon''ble Supreme Court, in our view, support the contention urged on behalf of the assessee: and the decision of the Hon''ble Allahabad High Court in Kalpana Palace (supra), with which we respectfully concur, directly applies to the present case.

18. Accordingly, the formulated question is answered in the affirmative that the Tribunal was justified in affirming the deletion of addition of Rs. 9,13,143, being the amount of entertainment tax capitalized as subsidy; and that the referred decisions do not operate against the assessee. In view of the above, the appeal fails and is, therefore, dismissed.