IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.3095, 3096 & 3094/Del./2014
Assessment Years 2009-2010, 2010-2011 & 2008-2009

The DCIT, Circle-2, 13-A Subhash Road, DDN, Uttarakhand.	Vs	Shipra Hotels Ltd., Mosaic Hotel, Masonic Lodge Road, Mussorie. PAN AAGCS8808K
(Appellant)		(Respondent)

For Revenue :	Shri Kaushlendra Tiwari, Sr. D.R.
For Assessee :	Shri S.K. Mehta, C.A.

Date of Hearing :	22.03.2018
Date of Pronouncement :	02.04.2018

ORDER

PER BHAVNESH SAINI, J.M.

All the appeals by the Revenue are directed against different orders of the Ld. CIT(A)-1, Dehradun, dated 06th February, 2014, for the A.Ys. 2009-2010, 2010-2011 and 2008-2009.

2. We have heard the learned Representatives of both the parties and perused the material on record.

3. The issue is same in all the appeals that "Whether the Ld. CIT(A) was justified in Law and on facts in treating the entertainment tax collected as capital receipt as the assessee was showing entertainment tax receipt as revenue receipt in the assessment years earlier than A.Y. 2008-2009." The Ld. CIT(A) decided the issue in favour of the assessee in A.Y. 2008-2009 and same findings have been followed in the remaining assessment years. Therefore, for the purpose of disposal of the departmental appeals, the appeal for A.Y. 2008-2009 is decided as under.

ITA.No.3094/Del./2014 – A.Y. 2008-2009 :

4. Briefly, the facts of the case are that assessee-company is engaged in the business of running of hotel, trading of IMFL, real estate and running of mall and multiplexes. The assessee revised the return of income whereby the entertainment tax receipt was shown as capital receipt against revenue receipt shown in the original return of income. The A.O. asked the assessee as to why the receipt on account of

entertainment tax should not be treated as revenue receipt. The assessee filed written submissions before the A.O. which is reproduced in the assessment order which reads as under :

"Perusal of the letter issued by the UP State Govt, to JAM Multiplex a unit of Shipra Hotels Ltd. for grant of entertainment tax subsidy and based on the relevant scheme of UP Govt, (available on the website of UP Govt. Tax Deptt.) reveals that the subsidy was granted to JAM multiplex under the UP Govt's incentive scheme for "promotion for construction of multiplex" and the overall quantum of subsidy is limited to cost of construction of JAM multiplex (excluding the cost of land).

Entertainment tax subsidy received by JAM Multiplex under UP Government's scheme for promotion of construction of Multiplexes is a capital receipt as it is given in the manner of grant in aid for setting up the multiplex which is not chargeable to tax.This argument gets support of all the three Allahabad High Court

judgments attached herewith in relation to the similar scheme laid down by the UP Government.

It is, therefore, requested that entertainment tax collected by the assessee may please be allowed to be treated as capital receipt and may please be treated as non taxable."

4.1. The A.O, however, noted that multiplexes have been given relaxation in payment of entertainment tax after they have been established. The scheme of the State Government is reproduced in the assessment order which *inter alia* provides that multiplex of the assessee would start exhibiting the film from 31st March, 2005 and assessee is entitled to receive entertainment tax for first 05 years which will be exempted 100% from entertainment tax, subject to the condition that if cost of construction of multiples is recovered before 05 years, then, for the remaining period, no such benefit shall be granted. The entertainment tax is exempted for benefit of owner of multiplexes for the amount payable by him which would be

adjusted to cost. A.O. noted that entertainment tax subsidy granted by State of U.P. is given after the multiplex has started the operation. The purpose of scheme is to help the multiplex run profitably. It is, therefore, revenue receipt. The issue of the treatment meted-out to a subsidy (entertainment tax grant) received from Uttar Pradesh Government for operating Multiplex Cinema Theatre. The claim of the assessee is for treating this amount as capital receipt, whereas, the A.O. has treated this as revenue receipt, which has subsequently been placed outside the purview of Section 80IB of the Act and also on the ground that such receipt is only "attributable" to the business and not derived from the same.

5. The assessee challenged the order of the A.O. treating the subsidy as revenue receipt and thereafter, taking it as being outside the scope of relief under section 80IB of the I.T. Act. The Ld. CIT(A), after considering the explanation of assessee and purpose of the subsidy held that the receipt is capital receipt and allowed the appeal of assessee. The submissions of

assessee and findings in paras 4.1 to 4.4 of the order are reproduced as under :

> *4.1 "It is averred by the Appellant that the U.P. Government gave subsidy to promote setting up of multiplexes. The scheme was devised to allow a grant to be calculated on the basis of cost of Building and Machinery (excluding cost of land). As per this scheme a subsidy equivalent to the cost of building and Machinery was allowed to be collected as entertainment tax with the operator/owner of the said multiplex being allowed to retain an amount equivalent to the eligible amount over a period of 5 years. To canvass the view that this receipt is capital in nature, the Id.AR has relied upon the following cases:-*
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> (i) PVR Ltd. vs. Addl. CIT (ITA.No.897/Del./2010, Order dated 20.04.2012).
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> (ii) ITO vs. Birla VXL Ltd., (Tax Appeal Nos.316 to 318 of 2012 (Gujarat).
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> *4.2 The facts of the case and position of law has been considered. It is clear that the said subsidy is linked to capital investments in setting up Multiplexes. Accordingly, the intention of the U.P. Govt, is clearly to promote this line of business through offsetting the capital*

cost to some extent, incurred by the owner/operator. Clearly this receipt is a capital receipt and the case of PVR Ltd. (supra) is squarely in favour of the Appellant in this regard. The Id. AO is directed to treat this receipt as a capital receipt.

4.3 Before parting with this issue it needs to be mentioned that since this receipt is linked to the capital investment, it would go towards reducing the cost of capital investment. Thus the Id. AO must reduce the cost of relevant block of assets (Building and Machinery) leading to a consequential reduction in claim of depreciation. The Appellant must assist the Id. AO in re-computing the claim of depreciation.

4.4 Also the issue of whether this receipt is to be part of relief u/s 80-IB or not becomes purely academic and not relevant for now."

6. The Ld. D.R. relied upon the order of the A.O. and submitted that multiplex have been given exemption in payment of entertainment tax after they have been established. The subsidies given for meeting out day-to-day business and for

smooth running of the multiplex. Therefore, it is revenue receipt.

7. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that subsidy was granted under the Uttar Pradesh Government Incentive Scheme for promotion for construction of multiplexes and the overall quantum of the subsidy is limited to the cost of construction of the multiplexes, which is capital receipt. He has submitted that identical issue have been decided by the Hon'ble Supreme Court in the case of CIT-1, Kolhapur vs. M/s. Chaphalkar Brothers, Pune in Civil Appeal Nos.6513 – 6514 of 2012, Dated 07th December, 2017. He has, therefore, submitted that the issue is covered in favour of the assessee by the above Judgment of the Hon'ble Supreme Court. Copy of the same is placed on record and provided to Ld. D.R. also.

8. We have considered the rival submissions and considered the material on record. In the case of CIT-1,

Kolhapur vs. M/s. Chaphalkar Brothers, Pune (supra), the Civil Appeals related to Maharashtra are concerned, the subsidy Scheme of the State Government took the form of an exemption of entertainment duty in multiplex theatre complexes newly set-up, for a period of 03 years and thereafter, payment of entertainment duty @ 25% for the subsequent 02 years. The object of introducing the necessary amendments in the Bombay Entertainment Duty Act to effectuate the aforesaid subsidy scheme done by way of Ordinance and then by Amended Act. The Object and Reasons of the Scheme are reproduced in the Judgment of the Hon'ble Supreme Court in which the Government decided to grant concession in entertainment duty to multiplex theatre complex to promote construction of new Cinema Houses in the State. The subsidy was for first 03 years from the date of commencement of the Multiplex Theatre Complex, on which, no duty was charged and for the subsequent 02 years, it has charged @ 25%. The Hon'ble Supreme Court decided the issue as under :

"To take the facts of one of the matters before us, namely, Civil Appeal Nos. 6513-6514 of 2012, the assessment order in that case (dated 21.01.2006) found that the aforesaid scheme was really to support the on-going activities of the multiplex and not for its construction. Since the scheme took the form of a charge on the gross value of the ticket and contributed towards the day to-day running expenses, the Assessment Officer held that it was in the nature of a revenue receipt.

The appeal filed before the Commissioner met with the same fate and was dismissed substantially on the same reasoning.

However, the Income-Tax Appellate Tribunal by its judgment dated 30.06.2009, went into the matter in some detail, and after setting out the object of the aforesaid scheme went on to hold as follows :

"9.2 One aspect of the scheme in question is undisputed; after considering the clauses of the scheme, that the scheme do not provide any assistance for reimbursement of day to day revenue expenditure but the scheme is meant to build up and to promote new multiplex cinema halls which are nothing but for the construction purpose hence reimbursement is to cover-up the capital expenditure.

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10. In the light of the above discussion, we can therefore summarize our conclusion that broadly speaking the subsidy can be of two types:

(i) for the purpose of helping the growth of an industry;

(ii) For the purpose of supplementing the profits of an industry.

10.1. To ascertain whether in a particular case the subsidy in question fall under the category (I) or (ii) one has to carefully examine the form as well as substance of the impugned scheme. We have done that exercise, and on close examination undisputedly it was noticed that the scheme in question had fallen in the first category i.e. for the purpose of helping the growth of an industry. Though the collection was in the form of an entertainment Duty via sale of tickets for a limited period but its utilization was predetermined and granted with an assurance to cover up the cost of construction. Once it is demonstrated before us that too undisputedly that it was not attributed in any manner towards supplementing of day-to-day expenditure or in the furtherance of the profits than it cannot be said to be in the character of a revenue receipt. Contrary to this it was in the nature of a capital receipt being an incentive to

supplement the construction expenditure of new set up of Multiplexes hence in the nature of capital receipt. To arrive at this conclusion we draw support from a plethora of decisions, few of them already cited above. With the result we decide the ground in favour of the assessee." The appeal before the High Court was dismissed. The High Court's judgment dated 08.06.2011 referred to two Supreme Court judgments, namely, Sahney Steel & Press Works Ltd., Hyderabad Vs. Commissioner of Income-Tax, A.P.-I, Hyderabad 1997 (7) SCC 765 and Commissioner of Income Tax, Madras Vs. Ponni Sugars and Chemicals Limited 2008 (9) SCC 337 and after discussing these judgments, held :

"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

Income Tax Appellate 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"

Shri P.S.Narasimha, learned ASG appearing on behalf of the Revenue, assails the judgment passed by the High Court. According to him, there may be no doubt that the large object said to be achieved in the grant of subsidy by way of complete and then partial roll back of entertainment duty may be in the nature of subsidy relating to complexes which are highly capital intensive and require Government support. But according to him, the fact that the subsidy kicks in only after the multiplexes started functioning and issued tickets on which entertainment duty is then waived, would show that in reality what has already been set up is not the immediate object of the subsidy but that it is really in the nature of a helping hand for running of the day to-day business of the multiplexes. He relied heavily upon the judgment in Sahney Steel (supra) to buttress his submission and stated that on facts, this was a case similar to Sahney Steel. On the other hand, he distinguished the judgment in Ponni Sugars (supra) stating that on the facts of that case, in paragraph 10, in particular, it was very clearly held that the benefit of the scheme had to be utilised only for re-

payment of loan. Therefore, it was obviously capital in nature, and not revenue.

On the other hand, Shri Jahangir Mistry, learned senior counsel appearing for the respondents, and Shri S.Ganesh, learned senior counsel appearing for some of the respondents, have argued that if Sahney Steel is to be read in its entirety, the judgment on facts supports the proposition that it is only the purpose of the scheme that is the test for finding out whether the scheme is, in fact, capital or revenue in nature. The source of funds for the scheme and the form of the scheme are irrelevant and if it is clear that the purpose is in order that capital expenses be met out of the subsidy granted in the scheme, then the object of the scheme points to receipt of funds being capital in nature. They both stressed the fact that the statement of object and reasons specifically state that multiplexes are truly capital intensive, their period is long and, therefore, they need government support. They also relied upon the statement that the grant of concession to such multiplexes was to promote construction of new cinema houses in the State.

Having heard learned counsel for both sides, it becomes necessary to analyze the judgments relied upon.

In Sahney Steel (supra), the notification issued by the Andhra Pradesh Government was concerned with certain facilities and incentives which were to be given to all new industrial undertakings which commenced production on or after 01.01.1969 with investment capital not exceeding Rs. 5 crores. The incentives were to be allowed for a period of five years from the date of commencement of production. Concession was also available for subsequent expansion of 50% and above. The incentives were in the form of, inter alia, refund of sale tax on raw materials, machinery and finished goods. This Court held, on the facts of that case, that as no financial assistance was granted to the assessee for setting up of the industry, the idea of the subsidy scheme was to provide a helping hand for five years in order to enable the industry to be viable and competent. In doing this, in paragraph 9 of the said judgment, the test stated by Viscount Simon in Pontypridd and Rhondda Joint Water Board v. Ostime (1946) 1 ALL ER 668 was referred to. In paragraph 10, the Court went on to apply the aforesaid test and stated that, since funds were made available to the assessee to assist it in carrying on its trade and business, there can be little doubt that the object "of various assistances under the subsidy scheme was to enable the assessee to run the business more profitably".

The judgment of the House of Lords in Seaham Harbour Dock Co. Vs. Crook, 16 TC 333 was then referred to and distinguished. What is important for our purpose is the fact that in para 18 of that judgment, the test of whether the receipt of subsidy is capital or revenue is stated as follows:-

"If any subsidy is given, the character of the subsidy in the hands of the recipient whether revenue or capital - will have to be determined by having regard to the purpose for which the subsidy is given. If it is given by way of assistance to the assessee in carrying on of his trade or business, it has to be treated as a trading receipt. The source of the fund is quite immaterial." The Court went on, thereafter, to give a telling example in para 19 of the aforesaid judgment, which is set out herein below:-

"For example, if the scheme was that the assessee will be given refund of sales tax on purchase of machinery as well as on raw materials to enable the assessee to acquire new plants and machinery for further expansion of its manufacturing capacity in a backward area, the entire subsidy must be held to be a capital receipt in the hands of the assessee. It will not be open to the Revenue to contend that the refund of sales tax paid on raw materials or

finished products must be treated as revenue receipt in the hands of the assessee. In both the cases, the Government is paying out of public funds to the assessee for a definite purpose. If the purpose is to help the assessee to set up its business or complete a project as in Seaham Harbour Dock Co. case, the monies must be treated as to have been received for capital purpose. But if monies are given to the assessee for assisting him in carrying out the business operation and the money is given only after and conditional upon commencement of production, such subsidies must be treated as assistance for the purpose of the trade."

Thereafter, the Court went on to discuss certain High Court judgments and, in para 30, specifically referred to the Bombay High Court judgment in Sadichha Chitra's case (1991) 189 ITR 774 and approved the view taken by the Bombay and Kerala High Courts as they accorded with the principle laid down in Seaham Harbour Dock Co. case. The facts in Sahney steel were distinguished from the facts of the Bombay and Kerala judgments as follows:-

> *"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. Applying the test of Viscount Simon in the case of Ostime it must be held that these subsidies are of revenue character and will have to be taxed accordingly."

The next important judgment that was referred to is the judgment in Ponni Sugars & Chemicals Limited (supra). On the facts in that case, incentives given under a scheme relating to sugar production were in the nature of a higher free sale sugar quota, and also allowing the manufacturer to collect excise duty on the sale price of free sale sugar in excess of the normal quota but to pay to the government only the excise duty payable on the price of levy sugar. Clause 7 of the aforesaid scheme was set out in para 3 of the judgment as follows:-

"The beneficiaries of the incentive scheme shall ensure that the surplus funds generated through sale of the incentive sugar are utilised for the repayment of term loans, if any, outstanding from the Central financial institutions. The sugar factories should submit utilisation certificates annually from Chartered/Cost Accountant, holding certificate of practice. Utilisation certificate in respect of each sugar season during the

incentive period should be furnished on or before 31st December of the succeeding year. Failure to submit utilisation certificate within the stipulated time may result not only in the termination of release of incentive free sale quota, but also in the recovery of the incentive free sale releases already made, by resorting to adjustment from the free sale releases of future years."

The Court then referred to the background of the incentive scheme and to the fact that the Sampat Committee was set up to examine the question relating to the economic viability of new sugar factories. The Court then found in para 9 of the judgment that the Sampat Committee referred to the fact that the increase in the cost of new sugar factories was because of increase in the cost of plant and machinery. The Committee then stated that five possible incentives for making a sugar plant economically viable could be provided. It is two of such incentives referred to that was the subject-matter for decision before this Court.

In Para 10 this Court found:

"We have examined in this case the 1980 and 1987 Schemes. Essentially all the four Schemes are similar

except in the matter of details. Four factors exist in the said Schemes, which are as follows:

(i) Benefit of the incentive subsidy was available only to new units and to substantially expanded units, not to supplement the trade receipts.

(ii) The minimum investment specified was Rs.4 crores for new units and Rs.2 crores for expansion units.

(ii) Increase in the free sale sugar quota depended upon increase in the production capacity. In other words, the extent of the increase of free sale sugar quota depended upon the increase in the production capacity.

(iv) The benefit of the Scheme had to be utilised only for repayment of term loans."

After discussing the judgment in Sahney Steel case, this Court then held:

"The importance of the judgment of this Court in Sahney Steel case lies in the fact that it has discussed and analysed the entire case law and it has laid down the basic test to the applied in judging the character of a subsidy. The 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 utilised 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."

Sahney Steel was distinguished, in para 16 by then stating that this Court found that the assessee was free to use the money in its business entirely as it liked.

Finally, it was found that, applying the test of purpose, the Court was satisfied that the payment received by the

assessee under the scheme was not in the nature of a helping hand to the trade but was capital in nature.

What is important from the ratio of this judgment is the fact that Sahney Steel was followed and the test laid down was the "purpose test". It was specifically held that the point of time at which the subsidy is paid is not relevant; the source of the subsidy is immaterial; the form of subsidy is equally immaterial.

Applying the aforesaid test contained in both Sahney Steel as well as Ponni Sugar, we are of the view that the object, as stated in the statement of objects and reasons, of the amendment ordinance was that since the average occupancy in cinema theatres has fallen considerably and hardly any new theatres have been started in the recent past, the concept of a Complete Family Entertainment Centre, more popularly known as Multiplex Theatre Complex, has emerged. These complexes offer various entertainment facilities for the entire family as a whole. It was noticed that these complexes are highly capital intensive and their gestation period is quite long and therefore, they need Government support in the form of incentives qua entertainment duty. It was also added that government with a view to commemorate the birth centenary of late Shri V. Shantaram decided to grant

concession in entertainment duty to Multiplex Theatre Complexes to promote construction of new cinema houses in the State. The aforesaid object is clear and unequivocal. The object of the grant of the subsidy was in order that persons come forward to construct Multiplex Theatre Complexes, the idea being that exemption from entertainment duty for a period of three years and partial remission for a period of two years should go towards helping the industry to set up such highly capital intensive entertainment centers. This being the case, it is difficult to accept Mr. Narasimha's argument that it is only the immediate object and not the larger object which must be kept in mind in that the subsidy scheme kicks in only post construction, that is when cinema tickets are actually sold. We hasten to add that the object of the scheme is only one -there is no larger or immediate object. That the object is carried out in a particular manner is irrelevant, as has been held in both Ponni Sugar and Sahney Steel.

Mr. Ganesh, learned Senior Counsel, also sought to rely upon a judgment of the Jammu and Kashmir High Court in Shri Balaji Alloys vs. C.I.T. (2011) 333 I.T.R. 335. While considering the scheme of refund of excise duty and interest subsidy in that case, it was held that the scheme was capital in nature, despite the fact that the incentives were

not available unless and until commercial production has started, and that the incentives in the form of excise duty or interest subsidy were not given to the assessee expressly for the purpose of purchasing capital assets or for the purpose of purchasing machinery.

After setting out both the Supreme Court judgments referred to hereinabove, the High Court found that the concessions were issued in order to achieve the twin objects of acceleration of industrial development in the State of Jammu and Kashmir and generation of employment in the said State. Thus considered, it was obvious that the incentives would have to be held capital and not revenue. Mr. Ganesh, learned Senior Counsel, pointed out that by an order dated 19.04.2016, this Court stated that the issue raised in those appeals was covered, inter alia, by the judgment in Ponni Sugars, and the appeals were, therefore, dismissed.

We have no hesitation in holding that the finding of the Jammu and Kashmir High Court on the facts of the incentive subsidy contained in that case is absolutely correct. In that once the object of the subsidy was to industrialize the State and to generate employment in the State, the fact that the subsidy took a particular form and the fact that it was

granted only after commencement of production would make no difference.

In coming to the West Bengal cases, we find that the West Bengal Finance Act, 2003 which amended the Bengal Amusements Tax Act of 1922 also provided:

The Bengal Amusements Tax Act, 1922.

The provision seeks to provide, in order to encourage development of multiplex theatre complex, a very modern and highly capital-intensive entertainment centre, financial assistance to the proprietors of such complex by allowing them to retain, by way of subsidy, the amount of entertainment tax collected against the value of ticket for admission to such multiplex theatre complex for a period not exceeding four years;

Since the subsidy scheme in the West Bengal case is similar to the scheme in the Maharashtra case being to encourage development of Multiplex Theatre Complexes which are capital intensive in nature, and since the subsidy scheme in that case is also similar to the Maharashtra cases, in that the amount of entertainment tax collected was to be retained by the new Multiplex Theatre Complexes for a period not exceeding four years, we are of the view that

West Bengal cases must follow the judgment that has been just delivered in the Maharashtra case.

Accordingly, the appeals filed by the Department are dismissed."

8.1. In the case of the assessee, the Uttar Pradesh State Government issued a letter to the assessee for grant of entertainment tax subsidy and based on the relevant Scheme of Uttar Pradesh Government, it reveals that subsidy was granted to multiplexes under Uttar Pradesh Government's Incentive Scheme for "Promotion for construction of Multiplexes" and overall quantum of subsidy is limited to the cost of construction, (excluding cost on land). Entertainment subsidy received by the assessee under Uttar Pradesh Government Scheme for promotion of construction of multiplexes was, thus, capital receipt. The object of grant of subsidy was in order that the persons come forward to construct Multiplex Theatre Complexes. The idea being that exemption from entertainment duty was granted for 05 years. It is also provided in the Scheme that if the cost is recovered prior to 05 years, for rest of the

period, the entertainment tax would be leviable. As per the Scheme, subsidy equivalent to the cost of building and machinery was allowed to be collected as entertainment tax with the operator/owner of the said Multiplex, being allowed to retain the amount, equivalent to the eligible amount over a period of 05 years. The issue is, therefore, covered in favour of the assessee by the Judgment of the Hon'ble Supreme Court in the case of CIT-1, Kolhapur vs. M/s. Chaphalkar Brothers, Pune (supra). The Departmental Appeal has no merit and the same is accordingly dismissed. The same findings are relevant in the remaining appeals for the A.Ys. 2009-2010 and 2010-2011. These appeals are also dismissed.

9. In the result, all the Departmental Appeals are dismissed.

Order pronounced in the open Court.

Sd/-	Sd/-
(LP SAHU)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 02nd April, 2018
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.