

आयकरअपीलीयअधिकरणन्यायपीठरायपुरमें।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं./ ITA No.76/RPR/2018

निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Chhattisgarh Mineral Development
Corporation Limited.
Khanij Bhawan, Sona Khan Bhawan,
Ring Road No.1, Purena
Raipur (C.G.)
PAN : AACCC1884D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-3(1), Ayakar Bhawan, Civil Lines,
Raipur (CG).

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhilesh Begani
Revenue by : Shri P.K. Mishra

सुनवाई की तारीख / Date of Hearing :15.01.2019

घोषणा की तारीख / Date of Pronouncement :17.01.2019

आदेश / ORDER

PERPARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)-1, Civil Line, Raipur dated 26.03.2018 for the assessment year 2014-15 as per following grounds of appeal on record:

“Ground No.1

On the facts and circumstances of the case as well as in law, the learned Commissioner of income Tax (Appeals)-1, Raipur (“the Ld. CIT(A)”) has grossly erred in confirming the action of the Learned Assessing Officer (“the Ld. AO”) in making addition of Rs.82,30,00,000/- being Grant/Financial Assistance (“the Grant”) received from the Government of Chhattisgarh (“the CG Govt.”) by holding it as Revenue Receipt chargeable to as against Capital Receipt claimed by the appellant in its return of income which is highly unjustified , unwarranted , unsustainable , not proper on facts and not in accordance with the provisions of law.

The Ld. CIT(A) has failed to appreciate that the Tara Coal Block has been allotted to the CG Govt. only and the Grant has been received with a specific direction to be utilized for specific purpose of Development of Coal Block and in terms of the provisions of Chhattisgarh Mineral Development Fund Act, 2003 read with Chhattisgarh Mineral Development Fund Rules, 2004, the funds received therein could not have been utilized for other purposes except Development of Tara Coal Block and hence, he ought to have held the grant received as Capital Receipt not chargeable to tax applying the purposive test laid down by the Hon’ble Supreme Court in various judgments. Hence, it is prayed that the addition of Rs.82,30,00,000/- may please be deleted.

Ground No. 2

That the appellant craves leave to add, amend, alter or delete all or any of the grounds of appeal at the time of hearing of the appeal.”

2. The brief facts in this case are that certain subsidies had been received by assessee which is a corporation of Chhattisgarh Government. It is engaged in the business of exploitation of mines in the state. The amount in question was provided to the corporation for the purpose of

opening a mine which was allotted by MOC, Government of India. The assessee's contentions all throughout has been that the subsidy/financial grant received has been shown in the books of account of the assessee as 'Capital Receipt' and in the income tax return also, it has been accepted by the Department starting from assessment year 2006-07 upto the assessment year 2013-14. The assessments were completed u/s.143(3) of the Act and some subsidies has been accepted as 'Capital Receipt'. However, on the same set of facts and circumstances for assessment year 2014-15, the Department is of the opinion that the said subsidies are "Revenue Receipt" and accordingly, it has been taxed. The Ld. CIT(Appeals) has observed and held as follows:

"2.3 Facts being as above, the assessee is a corporation of Chhattisgarh Government. It is engaged in the business of exploitation of mines in the state. The amount in question was provided to the corporation for the purpose of opening a mine which was allotted by MOC, GOI. Once the mine is opened the assessee will have a stream of income attracting income tax. In addition to the existing sources of income, the assessee will have a further source of income. The expenditure in question will thus augment the business of the assessee. Whereas expenditure has been incurred to enhance the business and commerce, it has been held by the Honourable Supreme Court in the case of M/s. Sahney Steel & Press Works Ltd. & Ors (supra.) as a revenue item and the source of this expenditure will be income.

The basic principle to be applied for determination is whether a subsidy payment is to be assist in assessee's business. If the funds are made available to the assessee to assist it in carrying on its trade or business and the object of the subsidy was to enable the assessee to run the business more profitably then the amount will be revenue receipt. In the case of [1966] 60 ITR 253 (SC) V.S.S.V. Meenakshi Achi Vs. Commissioner of Income Tax in order to encourage rubber production, Malaya Government constituted a fund with amount

collected as cesses on rubber produced and exported as well as various duties collected from rubber producers and exporters. Assessee being only planters did not pay any duty for rubber exported. During relevant year certain amounts were credited against assessee corresponding to amount of rubber produced by it and payments were made from said amounts to assessee against expenditure incurred on maintenance of plantations. It was decided by the Apex Court that the receipts by the assessee were revenue receipts which were liable to be included in its assessable income. What is not a revenue receipt can be understood by the decision of Kerala H.C in the case of [1989] 46 Taxman 1 (Kerala) Commissioner of Income Tax Vs. Ruby Rubber Works Ltd. In that case replanting subsidy was received from Rubber Board under Replanting Subsidy Scheme of 1967 by Assessee Company. Fact was that during the accounting periods relevant to the assessment years 1971-72 and 1974-75, the assessee company received replanting subsidy from the Rubber Board under the Replanting Subsidy Scheme, 1967. The ITO held that the subsidy amount was not agricultural income and as the business carried on by the assessee was rubber manufacture and any expenditure incurred for the rubber plantation was also a business expenditure, the subsidy received, thus for recouping some of the expenditure was taxable income. On appeal, the AAC held that the avowed object of recouping the cost of planting and replanting rubber trees did not form the character of income and that it was only a capital receipt and so not a taxable receipt at all. On appeal by the revenue, the Tribunal while upholding the AAC's order observed that what was received by the assessee from the Rubber Board was only by way of reimbursement of expenditure incurred by it in replanting rubber trees. Assessee's claim is that production of mine had not started and the amount was received for making the mind fit to start production. Therefore the receipt was capital receipt. I find that at what stage an amount is received is not a criteria for deciding the nature of receipt. This issue has been dealt with in the case of [1996] 89 TAXMAN 56 (Ker.) Commissioner of Income tax Vs. Udaya Pictures (P.) Ltd. The issue was taxability of subsidy received by assessee from Government for producing new regional films is a revenue receipt. The assessee company was engaged in the business of production of cinematographic films. It has received Rs.37,500/- as subsidy from the Kerala Government for producing new regional films. In the return filed the amount was shown as capital receipt. The Assessing Officer agreed with the assessee's claim and did not include the said amount in the assessee's total income. The Commissioner, however, invoked the provisions of section 263 and directed the Assessing Officer to include the amount in total income. On appeal, the Tribunal held that the subsidy received by the assessee was not taxable. On reference the Hon'ble Kerala H.C. that in view of the decision of the Kerala High Court in Kesaria Tea Co. Ltd. Vs. CIT

[1989] 120 ITR 134 and from the material available in the instant case it was crystalline that what was received by the assessee from the Government was not a capital receipt but a subsidy and, therefore, it was income liable to tax.

In the present case the assessee is not the owner of the mine. The mine is owned by the Government of Chhattisgarh and it is not a capital asset of the assessee which has been entrusted to work on it. The facts are similar to M/s. Udaya Pictures (supra.) where subsidy received to make the picture was held to be revenue receipt by the High Court by reversing the decisions of all lower authorities. Therefore, the order of the Assessing Officer is hereby sustained and appeal is dismissed.”

3. That before us, the assessee has made following submissions:

“1. The Appellant herein is a Government Company as defined under the provisions of section 619 of the erstwhile Companies Act, 1956 (section 2(45) of the Companies Act, 2013) formulated, owned & controlled by the Government of Chhattisgarh (hereinafter referred to as "the CG Govt., with 99.99% shares being held by the CG Govt.), for Development of Mining, Marketing & Procurement of Minerals, regulating the Mining Activity In the State of Chhattisgarh, undertaking scientific exploration, commercial exploitation and viable trading of minerals In the State, either singly or In joint venture, to search for major and minor minerals, to acquire mining rights for exploration and exploitation of minerals, development of mines and other ancillary activities. The Appellant Company filed its return of income under the provisions of section 139(1) of the Income Tax Act, 1961 (In short "the Act") for the assessment year under reference on 26th November, 2014 declaring a Total Loss of RS.1,30,20,662/-. Profit & Loss Account was drawn up In accordance with the provisions of Parts II & III of Schedule VI of the Companies Act, 1956 and duly certified by the Statutory Auditors appointed under the Companies Act (Refer Page No.1 to 27 PB).

2. That In pursuance of the Revised Coal Mining Policy, 2001 and In furtherance of the aforesaid objectives for which the appellant company was formulated, the Department of Mining, Commerce, Industry & Public Undertakings, the CG Govt applied to the Ministry of Coal, Government of India for allotment of Mines for excavation of Coal and was accordingly allocated the Tara Coal Block situated In Hasdeo Arand Area, Surajpur, District Surguja, Chhattisgarh vide Approval/Allotment Letter No.13016/10/2002-CA Dated 14th August 2003 for working by the appellant i.e. to

say, the appellant was designated as the Implementation Agency/Nodal Agency for carrying out the Mine Development Work. It was further stipulated that the Coal produced from the aforesaid mines are to be used majorly for the purposes of supplying It to another Public Utility Enterprise viz. CSEB to be used for Generation of Electricity In its proposed Bhaithan Thermal Power Station i.e. the final product (electricity) is also to be used for the purpose of benefit of public at large. (Copy of the aforesaid Approval/Allotment Letter at Page No.30 &31 PB).

3. That subsequently, the Mineral Resources Department, Government of Chhattisgarh finding It expedient to make special provisions for creation of Mineral Development Fund (hereinafter referred to as the "MDF") for the State of Chhattisgarh and' utilisation towards mineral exploration and development of mining activities in the State and for matters connected therewith or incidental thereto, formulated the Chhattisgarh Mineral Development Fund Act, 2003 (No.22 of 2003) (hereinafter referred to as the "CMDFA") with effect from 25th September, 2003 (Date of Publication in the Official Gazette of the CG Govt.). Further, in terms of the provisions of section 10 of CMDFA, the Mineral Resources Department, Government of Chhattisgarh formulated the Chhattisgarh Mineral Development Fund Rules, 2004 (hereinafter referred to as the "CMDFR")with effect from 24th August, 2004 (Date of Publication in the Official Gazette of the CG Govt.) prescribing rules for application for financial assistance from the Mineral Development Fund, sanction and release of fund, maintenance of account etc. [Copy of the CMDFA &CMDFR at Page No.36 to 42 PS]

4. That in pursuance of the aforesaid allotment/handling over of the Tara Coal Block and with the objective of Development of the aforesaid Tara Block for the purpose of extraction of coal, the Mineral Resources Department, CG Govt. had sanctioned and disbursed by way of Grant/Financial Assistance to the extent of Rs.179.4228 Cr. From Assessment Year 2006-07 onwards (including a sum of Rs.82.30 Cr. Received in the assessment year under appeal). It is further submitted that the Details of receipts of Financial Assistance from MDF for Development of Tara Coal Block indicating Date of sanction/approval order, Order No., Financial Assistance Received (in Rs.) and purpose for which financial assistance was sanctioned as compiled is enclosed herewith.

That the Financial Assistance has been sanctioned/granted from MDF as per the provisions of CMDFA for the following purposes (indicative only) :

- a) *Development of Tara Coal Block - Exploration, Rehabilitation & Re-establishment;*
- b) *Development of Tara Coal Block - Formation of Joint Venture, Permission as per Forest Conservation Act, Rehabilitation & Re-establishment work in respect of the Tara Coal Mines Area;*
- c) *Investment in Share Capital of Joint Venture Company CICL;*
- d) *Development of Tara Coal Block - Deposit of Net Present Value (NPV) with the Forest Department for Diversion of Forest Land & Compensatory Afforestation as per the provisions of Forest Conservation Act, 1980; &*
- e) *Development & Implementation of Tara Coal Project - Award Amount determined in respect of Acquisition of Land, Lease, Agreements & Compensation for Structure on the aforesaid acquired lands & Deposit of Permission Fees with Forest Department*

It is further submitted that the Grant/Financial Assistance has been sanctioned with the stipulation that the expenditure has to be incurred keeping in view the Major Head which clearly is indicative of the fact that the Major Head in which the Financial Assistance has been granted to the appellant is towards incurrment of Capital Expenditure only for Mineral Exploration & Development - Mining/Excavation purposes.

5. That further, the appellant incurred/utilized a sum of Rs.273.5614 Cr. towards development of Tara Coal Block from the Assessment Year 2006-07 onwards (including a sum of RS.171.5614 Cr. incurred in the assessment year under appeal). Details of Utilization of Funds (expenditure) received from MDF at Page No.2B & 29 PB. In accordance with the objectives of development of coal block, a Joint Venture Company by the name CMDC-ICPL Coal Ltd. was formed with the objective of Development of Tara Coal Project for undertaking the Mining, Selling & Supplying the Coal from aforesaid Coal Block to meet the coal requirements of the proposed Thermal Power Project of IFFCO Chhattisgarh Power Ltd. It is further submitted that the Grant/Financial Assistance received have been utilized only for Development of Tara Coal Block i.e. only for Capital Purposes for incurrment of Capital Expenditure only such as Payment of Compensation Amount (Award) determined by the Land Acquisition Officer as regards acquisition of lands, rehabilitation & re-establishment compensation to the Land Owners (Villagers) in Tara Coal Mine Area, Compensation (NPV) towards diversion of forest lands to CAMPA through Forest Department, Investment in

Share Capital of CICL etc. and there is no user for the purpose of meeting out any operational or routine expenditure of the appellant corporation which could be termed as revenue expenditure in terms of the provisions of the law.

6. It is further submitted that in accordance with the CMDFA r.w. CMDFR, an Advisory Committee was required to be constituted under section 6 of the CMDFA comprising of various Government Representatives including the Hon'ble Chief Minister. The objective of constitution of the aforesaid Advisory Committee by the CG Govt. was for the purpose of giving directives for proper utilization of the Fund and the allocation from the fund for various purposes as per Section 5 and also to perform prescribed functions.

It is further submitted that the provisions of CMDFA governs the terms of sanction/allotment of fund from MDF to the appellant and further, regulates the utilisation of funds disbursed from MDF. Section 3(1) of CMDFA stipulates the constitution of Chhattisgarh Mineral Development Fund which will be formed by earmarking five percent of revenue collected during the preceding financial year. Section 4 of CMDFA stipulates assignment of funds to the Mineral Resources Department, CG Govt. for further allotment to Directorate and Appellant. Further, most importantly, Section 5(b) of CMDFA stipulating and regulating the Utilisation of Funds allotted to the Appellant Corporation reads as "The Fund may be utilised for carrying out the activities of the Corporation such as exploitation of minerals, partnership in Joint Ventures, providing infrastructures in mines and also for other purposes connected with mining activities for functions for promoting mineral based industries in the State in accordance with the State Mineral Policy"

Section 6(1) of CMDFA provides for constitution of Advisory Committee as aforesaid for the purposes of giving directives for proper utilisation of the Fund and allocation from the Fund for various purposes as per Section 5 and most importantly, section 6(2) of CMDFA stipulates that "The Fund shall be regulated and administered by the Department and its utilisation shall be subject to the approval of the Advisory Committee. Provided that the Fund shall not be utilized for any purposes other than those for which it is created.

That in terms of formulation of CMDFA r.w. CMDFR, the CG Govt. had been disbursing Public Funds in the shape of Grants/Financial Assistance to the appellant corporation with specific purpose/directive (as per section 5 of CMDFA) of applying the disbursed funds from MDF towards the Development of Tara Coal Block only i.e. for Development of a Capital Asset or for augmenting

the Capital Base/Investment of the CG Govt. i.e. inextricably for setting up of the mines for exploitation & exploration of minerals and which did not have any material bearing or vital link with the factum of commercial production of captioned coal mines and it was explicitly stipulated by the provisions of section 6 of CMDFA that the funds received from MDF shall not be utilized for any purposes other than those for which it is created i.e. to say, the appellant was obligated under the statutory provisions of CMDFA r.w. CMDFR to utilize/spend the funds received from MDF for incurment of expenditure on Capital Account only (Development of Tara Coal Block) and was estopped, in certain terms, to utilize the same for incurring any operational or routine or day-to-day revenue expenditure and further, the Grant was neither granted nor utilized by the appellant towards facilitation of its trade or business nor there was any element of profit nor involvement of any revenue/profit motive in such Grant received by the appellant hence, the Grant would certainly be classified as a Capital Receipt not chargeable to tax.

7. That since the aforesaid Tara Coal Block is still in a very nascent/initial pre-operative stage with only the proceedings for land acquisition of mine area, obtaining forest clearance in respect of forest land etc. going on, with excavation of coal (what to say of commercial production) still not started and possibility of such commercial production very far-off hence, there was no revenue generation nor there were chances of such generation or commercial production for a considerably long period from the aforesaid Tara Coal Block.

8. That as is evident from the minutes of meetings of Advisory Committee, the Financial Assistance granted to the appellant was explicitly stipulated to be returned/contributed to MDF in due course of time (subject to when the Project starts generating revenue/profits) and hence, could never have constituted/formed the income of the appellant corporation since, the same had never been given with an intention of conferring absolute dominion or control of the appellant on such amounts and in the absence of permanent vesting of discretion on the amounts granted, the same could never constitute "income" of the appellant as had been fallaciously construed by the Ld.AO and upheld by the Ld.CIT(A). Reliance in support is placed upon the Judgments of the Hon'ble Supreme Court in the case of CIT Vs. Shoorji Vallabhdas & Co. (1962) 46 ITR 144 (SC) and CIT Vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC).

9. That the Ld.CIT(A) at Para 2.3 Page No.14 of the Appellate Order though fervently accepts the fact that the amounts from MDF were given towards incurment of capital expenditure and also further,

accepts the fact that the Tara Coal Block is still in pre-operative stage by recording an explicit finding that "The amount in question was provided to the corporation for the purpose of opening a mine which was allotted by MO (GOI. Once the mine is opened .. " but however, ascribes to the reasoning that the whenever the mine would be operational, it will generate a stream of income for the appellant which will be in addition to the existing sources of income and hence, such expenditure incurred by CG Govt would augment the business of the and hence, would be a revenue receipt chargeable to tax. Hence, the confirmation of addition by Ld. CIT(A) is highly unjustified, unwarranted, against the settled principles of law and based on incorrect assumption of facts.

10. That the judgments relied upon by the Ld. CIT(A) in the cases of V.S.S.V. Meenakshi Achi Vs. CIT (1966) 60 ITR 253 (SC) and CIT Vs. Udaya Pictures (P) Ltd. (1997) 225 ITR 394 (Ker. HC) have been rendered on entirely different & distinguishable facts wherein the purpose of giving subsidies were given as a helping hand to conduct the business in a more portable manner.

11. That the Appellant respectfully submits that applying the 'Purpose Test' that determines the character of receipt in the hands of the assessee for which the subsidy is given, since, the object of giving financial assistance was to enable the appellant inextricably for setting/opening up of the coal mines, the present case is duly covered by the Judgments of the Hon'ble Supreme Court in the cases of CIT Vs. Ponni Sugars & Chemicals Ltd. (2008) 306 ITR 362 (Refer Page No.107 to 114 PB) & CIT Vs. Chaphalkar Brothers Pune (2018) 300 CTR 113 (Refer Page No.11S to 124 PB) propounding such receipts to be falling in the Capital Account. That the Appellant respectfully submits that in various judicial pronouncements, various Hon'ble High Courts have held that the grants given for specific purposes to be applied for capital outlays or incurment of capital expenditure would be in the nature of capital receipts not chargeable to tax and further, that grants-in-aid received for specific purposes cannot be treated as income and would constitute a capital receipt not chargeable to tax. Reliance in support is further placed upon the following judicial pronouncements:

- a) CIT Vs. Gujarat Water Resources Development Corporation Ltd in Tax Appeal No.530 of 2010 (GujHC)(Pg.No.125 to 128 PB)
- b) CIT Vs. M/s.Inland Waterways Authority of India in ITA No.I04 of 2007 (All.HC) (Pg.No.129 to 130 PB)

- c) *CIT Vs. Tamil Nadu Tourism Development Corporation Ltd (2016) 288 CTR 444 (MadHC) (Pg. No.131 to 134 PB)*
- d) *CIT Vs.India Telephone Industries Ltd (2014) 268 CTR 348 (Del.HC) (Pg. No. 135 to 137 PB)*
- e) *CIT Vs.M/s.Chouhan Education Society ITA No.188/2009 (MP HC) (Pg. No. 138 & 139 PB)*
- f) *CIT Vs. Delhi State Industrial & Infrastructure Dev. Corp. Ltd in ITA NO.1207/2011 (Date of Judgment: 06.082012)(Del.HC)*
- g) *CIT Vs. The Punjab State E-Governance Society in ITA No. 75 of 2011 (P & H HC) (Pg. No. 146 to 150) PB)*
- h) *CIT Vs. Karnataka Urban Infrastructure Development & Finance Corporation (2006) 284 ITR 852 (Kar. HC) (Pg. No. 151 to 154 PB)*
- i) *CIT Vs. Bihar Rajya Pul Nirman Nigam Ltd. (1991) 191 ITR 173 (Pat. HC) (Pg. No. 155 to 158 PB)*
- j) *CIT Vs. Arunachal Pradesh Forest Ltd. (1993) 201 ITR 129 (Gau. HC) (Pg. No. 161 to 168 PB)*

Even otherwise, presuming but not admitting, in the facts of the present case, the appellant is a wholly owned Government Company, hence, the amounts received from MDF may be considered to be in the nature of financial assistance so as to ensure the survival of the company and in such cases, also the same has to be regarded as a capital receipt. Reliance in support is placed upon the Judgment of the Hon'ble Calcutta High Court in the case of PCIT Vs. State Fisheries Development Corporation Ltd (2018)94 taxmann.com 466 (Cal. HC) (Refer Pg.No. 140 to 145 PB).

12. Without prejudice to the above, it is further submitted that it is an uncontroverted fact that the appellant corporation has been receiving such Capital Grants in preceding assessment years as per details furnished and the assessment cases for such years have also been completed under scrutiny assessment procedure under section 143(3) of the I.T.Act by erstwhile Learned Assessing Officers accepting and assessing the nature of Capital Grants as such and further, the said assessments have already attained finality in this regard and there are no change in fundamental aspects (nature of grant & mode of

disbursements from MDF remains unaltered) in the assessment year under reference vis-a-vis the preceding assessment years hence, in the absence of any justifiable reason for departure from already taken confirmed view, applying the Rule of Consistency with definiteness in approach and to achieve finality in assessment proceedings, diametrically opposite approach by the Department as has been done by the Ld.AO in the assessment year under reference is impermissible, the claim of the appellant corporation deserves to be accepted and the Financial Assistance received from MDF for Development of Tara Coal Block ought be held as "Capital Receipt" not chargeable to tax. In support, the copies of assessment orders passed under section 143(3) of the I.T.Act in respect of the Assessment Years 2006-07,2007-08,2009 -10,2012-13 & 2013-14 are enclosed (Refer Pg.No.96 to 106 of PB). Reliance in support is further placed upon the following judicial pronouncements:

- a) Radhasoami Satsang Vs. CIT (1992) 193 ITR 32 (SC) (Page No.169 to 174 PB)*
- b) CIT Vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC) (Pg No. 161 to 168 PB)*
- c) Godrej & Boyce Manufacturing Company Limited Vs. DCIT (2017) 394 ITR 449 (SC) (pg No. 175 to 177 PB)*

In view of the above, the addition of Rs.82,30,00,000/-made by the Ld. AO and that sustained by the Ld.CIT(A), being Financial Assistance received from MDF towards Development of Tara Coal Block, treating the same as Revenue Receipt is highly unjustified, unwarranted, based on incorrect assumption of facts and not in accordance with the provisions of law and it is requested that the same may please be deleted holding the said amount as a "Capital Receipt" not chargeable to tax."

4. We have perused the case records and heard the rival contentions. We have also analyzed the facts and circumstances in this case. We find that starting from assessment year 2006-07 onwards, the subsidies/financial grant were received by the assessee and all throughout the years, assessment were completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and it has been

accepted as 'Capital Receipt'. This continues till the assessment year 2013-14. It is only for the relevant assessment year i.e. 2014-15 the Department, on the similar facts and circumstances and on same subsidy/financial grant received by assessee, has taxed appreciating the same as 'Revenue Receipt' in the hands of the assessee. The Hon'ble Supreme Court of India in the case of CIT Vs. Ponni Sugars & Chemicals Ltd. reported as 306 ITR 362 and in the case of CIT Vs. Chaphalkar Brothers Pune (2018) reported as 318 CTR 113 has held that the grants given for specific purposes to be applied for capital outlays or incurment of capital expenditure would be in the nature of capital receipts not chargeable to tax and further, that grant in aid received for specific purposes cannot be treated as income and would constitute a capital receipt not chargeable to tax.

Further, the Hon'ble Calcutta High Court in the case of PCIT Vs. State Fisheries Development Corporation Ltd. reported as 94 taxmann.com 466 has held that where the assessee is a wholly owned Government Company, hence, the amounts received from MDF may be considered to be in the nature of financial assistance so as to ensure the survival of the company and in such cases, also the same has to be regarded as a capital receipt.

5. The Ld. DR vehemently argued that every year is separate year so far as income tax is concerned and the doctrine of res-adjudicata does not apply to the income tax proceedings.

6. Per contra, the Ld. AR of the assessee contended that Hon'ble Apex Court has laid down the principle of statusquo should be maintained by the Revenue Authority. Therefore, when on the similar facts and circumstances prevailing in present assessment year as compared with same facts and circumstances as in the earlier assessment years, then the decision taken in the earlier years should match with the decision of the present assessment year. Meaning thereby, decision in the present year also should be the same which was taken in the earlier assessment year.

Before parting with this issue, it is necessary to deal with the 'Rule of Consistency' pleaded by the Ld. AR of the assessee. It is well laid down through catena of the decisions rendered by the Hon'ble Supreme Court of India and High Court.

The Hon'ble Supreme Court of India in the case of Radhasoami Satsang Vs. Commissioner of Income Tax, reported as 193 ITR 321 (SC) has held that res-judicata does not apply to the income tax proceedings. Again each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating

through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasoning in the absence of any material change justifying the Revenue to take a different view of the matter and if there was not change it was in support of the assessee.

The Hon'ble Delhi High Court in the case of CIT Vs. Neo Poly Pack (P.) Ltd. reported as 245 ITR 492 (Del.) has held that it is true that each assessment year being independent of each other, the doctrine of res-judicata does not strictly apply to the income tax proceedings, but where an issue has been considered and decided consistently in a number of earlier assessment years, in a particular manner for the sake of consistency, the same view should continue to prevail in the subsequent assessment years unless there is some material change in facts.

The Co-ordinate Bench of the Tribunal, Mumbai in the case of Shri Sunil Kumar Ganeriwal Vs. DCIT, in ITA No. 4276/Mum./2008 has held that the assessee has followed a consistent practice in regard to the nature of activities, the manner of keeping records and the presentation of shares as investment at the end of the year, in all the years. The position that the principle of res-judicata is not attracted since each assessment year is

separate in itself. The Tribunal further held that there ought to be uniformity in treatment and consistency when the facts and circumstances are identical particularly in the case of the assessee. The Assessing Officer cannot take a different view for the assessment year under consideration where the facts and circumstances are identical.

7. The Ld. DR conceded to the facts that all the facts and circumstances as existed from assessment year 2006-07 onwards are same with the present assessment year i.e. assessment year 2014-15. It is also undisputed that all throughout the years, assessment was completed u/s.143(3) of the Act and the subsidy has been accepted as 'Capital Receipt'. If in this assessment year i.e. 2014-15, the assessment was something erroneous and prejudicial to the interest of the Revenue then the Ld. CIT(Appeals) could have resorted to revisionary jurisdiction u/s.263 of the Act. This is not done in the case of the assessee which means that Revenue has all throughout accepted that assessment was completed in the case of the assessee u/s.143(3) of the Act and the facts that the subsidy received are capital in nature. Then in similar facts and circumstances in the present assessment year i.e. 2014-15, in absence of any new material and evidence, taxing subsidy as 'Revenue Receipt' by the Revenue Authority is the exercise which can be termed as arbitrary, unjudicious, unwarranted and bad in law and therefore, liable to be deleted.

Therefore, we are of the considered view that on examination of the facts and principle of status quo which has to be maintained as opined by the Hon'ble Supreme Court of India and High Courts in the aforesaid cases, we set aside the order of the Ld. CIT(Appeals) and allow the appeal of the assessee.

8. In the result, appeal of the assessee is allowed.

Order pronounced on 17th day of January, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHASARATHI CHAUDHURY
JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated :17th January, 2019.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-1, Raipur(CG)
4. The Pr. CIT-1, Raipur (CG)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकरअपीलीयअधिकरण, रायपुर/ ITAT, Raipur.

		Date	
1	Draft dictated on	15.01.2019	Sr.PS/PS
2	Draft placed before author	16.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		