

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2531/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2012-13)

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| The Assistant Commissioner of Income Tax Circle-1(1)(2), Baroda | बनाम/ Vs. | M/s. Inox Leisure Limited 2 nd Floor, ABS Towers, Old Padra Road, Vadodara |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACI6063J | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी ओर से /Appellant by : | Shri S. N. Soparkar, Sr. Advocate & Ms. Urvashi Shodhan, A.R. |
| प्रत्यर्थी की ओर से/Respondent by : | Shri Vijay Kumar Jaiswal, CIT.DR |

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| सुनवाई की तारीख / Date of Hearing | 07/06/2023 |
| घोषणा की तारीख /Date of Pronouncement | 16/06/2023 |

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 29.07.2016 passed by the Ld. Commissioner of Income Tax (Appeals)-1, Vadodara arising out of the order dated 25.03.2015 passed by the ACIT, Circle-1(1)(2), Baroda under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2012-13.

2. The following ground of appeal raised by Revenue has left to be adjudicated by the Co-ordinate Bench while disposing of the appeal on 28.09.2021.

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in treating entertainment tax exemption in respect of Multiplexes of 9,89,90,747/- as capital receipt, not eligible to tax, without appreciating that the subsidy received by the assessee was after completion of the cinema house and commencement of operation and used entirely for the business operation, and therefore, revenue in nature.”

3. By and under the order dated 11.04.2023, the Co-ordinate Bench allowed the Miscellaneous Application being M.A. No.11/Ahd/2022 filed by Revenue for adjudication of the above ground.

4. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

5. Entertainment tax exemption in respect of Multiplexes of Rs.9,89,90,747/- is subject matter before us.

6. The assessee company filed its return of income on 28.09.2012 showing deemed income under Section 115JB of the Act at Rs.13,46,11,845/-. The same was duly processed. Upon selection of the case for scrutiny through CASS notice under Section 143(2) of the Act dated 06.08.2013 followed by further notice under Section 143(2) r.w.s. 129 and 142(1) of the Act dated 22.08.2014 alongwith detailed questionnaire was issued to the assessee on 10.10.2014.

7. The assessee company mainly engaged in the business of entertainment industry including operating multiplex entertainment complexes and related services including sale of food and beverages, advertisement by screen display, standees etc. giving parking facilities, receipt of charges from retail showrooms, restaurants etc. and also distribution of films and generation of power both captive use and sales to third parties, declared sales/turnover and other income at Rs.424.77 Crores for the year under consideration.

8. According to the assessee, the entertainment tax subsidy is a capital receipt not eligible to tax. Before the Ld. AO, the assessee submitted that the details regarding the treatment of entertainment tax exemption along with the relevant scheme for earlier years and claimed that the facts and circumstances continue to be identical in respect of Multiplexes in question before us. In fact, the Co-ordinate Bench has passed order in favour of the assessee for earlier years. The order passed by the Hon'ble 'C' Bench has been upheld by the Hon'ble Jurisdictional High Court in Tax Appeal Nos. 167, 168 & 169 of 2012 dated 08.01.2013. Hon'ble Jurisdictional High court held as under:

"14. The very purpose of the scheme thus was to give incentive to the multiplex units which were found to be highly capital incentive. The very scheme was considered in case of Commissioner of Income Tax, Kolhapur Vs. M/s. Chaphalkar Brothers, Pune (supra) in which, relying on the decision in case of Sahney Steel and Press Ltd. and ors. vs. Commissioner of Income Tax (supra) and Commissioner of Income Tax Vs. Ponni Sugars and Chemicals Ltd., the Bombay High Court upheld the Tribunal's decision making following observations:

"5. Since the object of subsidy was to promote construction of multiplex theater 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 theaters, 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."

15. In this respect also looking to the salient features of the scheme noted above as also the decision of the Bombay High Court interpreting this very scheme in context of the same situation, we uphold the decision of the Tribunal in this respect."

9. The assessee, therefore, relies upon the same, however, the Ld. AO disallowed the same, which was, in turn, deleted by the Ld. CIT(A) in appeal preferred by the assessee. The Ld. CIT(A) relied upon the appellate order for A.Y. 2011-12 dated 09.09.2015 in Appeal No. CAB-1/152/2014-15, whereby and whereunder the receipts on account of entertainment tax exemption received during the previous year 2010-11 had been held to be capital receipt. The impugned amount of receipt on account of 9 units out of which receipts of 7 units has been held to be capital in nature. The other 2 units, namely, Thane and Liluah located in Maharashtra & West Bengal, respectively has also been held as capital receipt in the appellate order of earlier years. In that view of the matter, the entire amount received by the appellant on account of entertainment tax exemption has been held to be capital receipt and not liable to be taxed. The addition, therefore, was deleted by the Ld. CIT(A).

At the time of hearing of the instant appeal, Ld. Senior Counsel Mr. S. N. Soparkar submitted before us that the matter is squarely covered by the judgment passed by the Hon'ble Supreme Court in the case of CIT-1, Kolhapur vs. Chaphalkar Brothers Pune, reported in [2017] 88 taxmann.com 178 (SC), a copy whereof has also been submitted before us. It is relevant to mention that SLP arising out of said order passed by Bombay High Court has

been rejected upholding the order passed by Hon'ble Bombay High Court in favour of the assessee.

10. It is submitted by Ld. Senior Counsel that the order passed in favour of the assessee by the Hon'ble Gujarat High Court has been challenged before Hon'ble Apex Court and the same was tagged along with the said matter of Chaphalkar Brothers Pune (supra), a copy of each of the said order passed by the Hon'ble Bombay High Court, the relevant documents downloaded from the Official Server of the Hon'ble Apex Court in support of such submission made by the Ld. Senior Counsel, the order passed by the Hon'ble Gujarat High Court in its own case has been submitted before us by the appellant's Counsel. He, therefore, prays for the similar relief before us. We note that the Ld. DR has not been able to raise any objection to such contentions made by the Ld. Senior counsel appearing for the assessee before us.

11. The issue, therefore, is before us where the object of respective subsidy schemes of State Governments was to encourage development of multiple Theatre Complexes, incentives would be held to be capital in nature or otherwise. In this aspect, we have considered the judgment passed by the Hon'ble Jurisdictional High Court and also the order passed by the Hon'ble Apex Court.

12. We have gone through the judgment passed by the Hon'ble Apex Court wherein the identical issue has been raised out of an order passed by the Hon'ble Bombay High Court in favour of the assessee and we find that the issue has been decided in favour of the assessee by upholding the order passed by the Hon'ble Bombay High Court to this effect that where object of

respective subsidy schemes of State Governments was to encourage development of Multiple Theatre Complexes, incentives has been held to be capital in nature and not revenue receipts. Thus, on identical facts and circumstances of the case, respectfully relying upon the order passed by the Hon'ble Apex Court, we find that the Ld. CIT(A) has rightly held in favour of the assessee on the ratio laid down by different High Courts and the Hon'ble Apex Court as well as cited hereinabove, which in our considered opinion, is without ambiguity so as to warrant interference and thus, the same is hereby upheld. This ground of appeal preferred by the Revenue is found to be devoid of any merit and, thus, dismissed.

13. In the result, Revenue's appeal is dismissed.

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| This Order pronounced on 16/06/2023 |
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 16/06/2023

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy

S. K. SINHA

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad