

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/12/2002

CORAM

THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

T.C.No.196 of 1999

The Commissioner of Income-tax,
Madurai. ... Applicant.

-Vs-

M/s. The Kanyakumari Dist. Co-op. Spinning
Mills Ltd., Aralvoymozhi. ... Respondent.

Reference arising out of the order of the Income-tax Appellate
Tribunal C-Bench, Madras in I.T.A.No.4184/Mds/ 89, dated 19-12-1997, at the
instance of the Revenue.

!For applicant :: Mrs.Pushya Sitharaman, Sr.SC for IT.

^For respondent :: Mr.V.Ramachandran, Sr.counsel for
M/s.Anitha Sumanth & Mallika,S.

:JUDGMENT

N.V.BALASUBRAMANIAN,J.

In this reference, the question that arises for consideration is whether certain amounts received by the assessee as subsidy are to be treated as revenue receipts or capital receipts. The relevant facts that are necessary for the disposal of the tax case reference are that the assessee received certain amount of subsidy from the Government of Tamil Nadu and in the assessment proceedings for the assessment year 1985-86, the assessee claimed that the amount received as subsidy from the Government of Tamil Nadu was a capital receipt and not liable to tax. The assessee received the subsidy amount in the following circumstances:- The Government of Tamil Nadu, taking into account the welfare of Adi Dravidas and their poor representation in the assessee's firm, sanctioned certain financial assistance amounting a sum of Rs.10.50 lakhs under a Special Component Plan to the assessee to recruit 70 Adi Dravidas and the assessee received the same. The assessee is a Co-operative Society and the total number of workers belonging to Adi Dravida community in the assessee mill were only 90 against the sanctioned strength of 912 persons out of which 832 permanent workers were employed. The Director of

Handlooms and Textiles requested the Government of Tamil Nadu to sanction certain amount for recruitment of 70 Adi Dravida workers in the assessee's mill under the Special Component Plan and on that basis, the sum of Rs.10.50 lakhs was sanctioned in favour of the assessee. The assessee also recruited 70 additional workers from Adi Dravida community. The relevant Government Order issued by the Social Welfare Department reads as under:-

"

SOCIAL WELFARE DEPARTMENT

G.O.Ms.No.2247 Dated: 3.9.1983

Aavani 18, Ruthrothkari

Thiruvalluvarandu 2014,

Read:

1. From the Director of Handlooms and Textiles, Madras letter Ro.No.38487/82/D3,dt. 2.2.83.
2. From the Director of Adi Dravidar and Tribal Welfare, Madras-5 Lr.Ro.No.81/2435/83,dt. 14.2.1983.
3. From the Director of Handlooms and Textiles Lr.Ro.No.38487/82/ D3, dated 28.3.1983.

.....

ORDER:

The Director of Handlooms and Textiles has stated that according to the spin plan for seven days' working and 15% for leave/absenteeism, the total number of labourers required in the Kanniyakumari District Co-operative Spinning Mills is 912. At present 832 permanent workers are working in the Kanyakumari District Co-operative Spinning Mills. The total number of Adi Dravidar workers in the Mill is only 90, which is below the prescribed reserved ratio of 18% for Scheduled Castes. In order to fill up the shortfall and to strengthen the equity base, the Mills has proposed to recruit 70 additional workers from Adi Dravidar Community and to avail the financial assistance of Rs.10.50 lakhs at the rate of Rs.15,000/- per head, under "Special Component Plan". The Director of Handlooms and Textiles has, therefore, requested the Government's permission to recruit 70 Adi Dravidar workers under Special Component Plan and to sanction Rs.10.50 lakhs at the rate of Rs.15,000/- per worker.

2. The above proposal was placed before the Secretaries' Committee under the Chairmanship of Chief Secretary to Government on 22.8.83. The Committee approved the scheme.
3. In pursuance of the decision of the Secretaries Committee, the Government sanction the payment of a sum of Rs.10.50 (Rs.ten lakhs and fifty thousand only) lakhs from the Special Central Assistance Fund available with Tamil Nadu Adi Dravidar Housing and Development Corporation to the Kanniyakumari District Co-operative Spinning Mills, so as to enable the Mill to recruit and employ 70 Hindu Adi Dravidars. The Managing Director, Tamil Nadu Adi Dravidar Housing and Development Corporation, is requested to release

the amount sanctioned above to the Mill as and when it is actually required.

4. The technical and professional responsibility for over-seeing, monitoring and ensuring proper tie-ups for finance and marketing will rest with the Director of Handlooms and Textiles, Madras. He is requested to see that all the 70 Hindu Adi Dravidars are employed within 3 months from the date of issue of the order and send a report to the Government.

5. The beneficiaries to be employed should be selected in accordance with the guidelines already issued in G.O.Ms.No.2593, Social Welfare Department, dated 30.10.1982.

(BY ORDER OF THE GOVERNOR)

M.S.RAMESH,
COMMISSIONER AND SECRETARY TO GOVERNMENT."

2. The Income-tax Officer held that the amount of Rs.3 lakhs received as subsidy was revenue in nature and assessed the same. The Commissioner of Income-tax (Appeals) confirmed the order of the Income-tax Officer holding that the subsidy was received in the course of business and income in nature. The Appellate Tribunal, however, on appeal, took a different view and held that the amount was granted and paid for a benevolent and beneficial purpose to provide employment to 70 workers belonging to Adi Dravida community and it was paid to promote weaker sections of the society and the subsidy amount received by the assessee was not the income of the assessee and not assessable to income-tax.

3. The Revenue filed an application before the Appellate Tribunal to state a case and refer a question of law, and the Appellate Tribunal has stated a case and referred the following question of law for our consideration:

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the amount of subsidy received by the assessee from the Tamil Nadu Government was in the nature of capital receipt and hence, cannot be taxed as income?"

4. We heard Mrs.Pushya Sitharaman, learned senior standing counsel for the Revenue and Mr.V.Ramachandran, learned senior counsel for the assessee. The first submission of Mrs.Pushya Sitharaman is that the assessee was required to recruit 18% of total staff from Schedule Caste people under the Government Reservation Policy and hence, the amount was received and it would represent the salary payable to the employees and therefore it is revenue in nature. We find that there is absolutely no material to show that the assessee was required to fill up 18% of its employees under the Reservation Policy of the Government. We also find that no such argument has been advanced and no finding has been rendered in this Court. The reference to 18% of the employees does not indicate that the assessee was obliged to follow 18% of the Government Reservation Policy and had the Reservation Policy been in operation in the assessee's mill, the assessee should have recruited persons from the Scheduled Caste much earlier to conform to the recruitment of 18% of the employees' strength, even without a Government Order

sanctioning the subsidy. Further, we are unable to accept the submission as the learned senior standing counsel for the Revenue. We are of the view that it is for the executives to determine whether persons coming from Adi Dravida community adequately represent in the services in the assessee's mill as the executives are supposed to know the existing condition in the society and make adequate provision. From that, it cannot be said that the amount received was towards the payment of salary to the persons to be employed ignoring the public and social purpose behind it.

5. The second submission of Mrs. Pushya Sitharaman, learned senior standing counsel for the Revenue is that what was granted by subsidy was reimbursement of the salary payable to the employees and since the assessee had already commenced its business, the subsidy amount received for running the business would be revenue in nature. Mr.V. Ramachandran, learned senior counsel for the assessee, on the other hand submitted that the object of granting the subsidy is not to benefit the assessee, but to benefit the persons from Adi Dravida community by providing employment to them and therefore, it is only capital in nature. We find considerable force in the submission of the learned senior counsel for the assessee. A close reading of the Government Order as well as the order sanctioning the amount clearly shows that the Government of Tamil Nadu has framed a Special Component Plan for employment of persons from Adi Dravida community and to provide employment to persons coming from Adi Dravida community, the Government has granted the subsidy with the object and intention to benefit the persons coming from Adi Dravida community by providing them employment. It is axiomatic that persons from Adi Dravida community are socially and educationally backward and for upliftment of persons coming from the weaker sections of the society, the Government of Tamil Nadu has framed a scheme and sanctioned the subsidy to the assessee. The scheme has a laudable social object behind it and under the scheme, persons from Adi Dravida community are required to be recruited so that instead of giving money directly to the persons who are oppressed and socially backward by way of dole, the offering of employment to such persons either in the Government or in other corporations would benefit not only the persons employed but also the entire community as a whole in the long run and would alleviate their sufferings to some extent. As earlier observed by us, the object of the grant of subsidy is to uplift the socially oppressed people and by providing employment opportunity, it will not only provide job opportunity, but also just sustenance to the persons so employed so that they can maintain themselves and their families just above the poverty line, and they can also come out of the backwardness and lead a life with dignity. We therefore hold that the object of the grant of subsidy is not to benefit the assessee, but it has a social object behind it to uplift the Adi Dravida community people and hence, the submission of the learned senior standing counsel for the Revenue that the amount was given for the benefit to run the mill by the assessee is untenable and we reject the same.

6. Learned senior standing counsel for the Revenue also submitted that if the amount received is held to be a capital receipt, it would amount to grant of double deduction as the assessee would have claimed the salary paid to its employees as business expenditure in the computation of business income. Apart from there being no material for such an assumption, we are of the view that the question regarding the nature and character of the receipt cannot be determined on the basis of deduction that might have been

granted at the time of discharge of its obligation, and the question whether it is a capital receipt or revenue receipt has to be determined at the time of the receipt of the amount depending upon the quality, nature and character of the receipt in the hands of recipient.

7. The House of Lords, as early as in 1930, in *THE SEAHAM HARBOUR DOCK CO. v. CROOK* (H.M.INSPECTOR OF TAXES (16 Tax Cases 333)) was considering a case of grant from an Unemployment Grants Committee to the dock company and the House of Lords held that the grants were not annual profits or gains liable to income-tax. The following observation of the House of Lords in the Seaham harbour Dock Co. case is relevant for the purpose of this case as well:-

" It was a grant which was made by a government department with the idea that by its use men might be kept in employment, and it was paid to and received by the Dock Company without any special allocation to any particular part of their property, either capital or revenue, and was simply to enable them to carry out the work upon which they were engaged, with the idea that by so doing people might be employed. I find myself quite unable to see that it was a trade receipt, or that it bore any resemblance to a trade receipt. It appears to me to have been simply a grant made by the Government for the purposes which I have mentioned, and in those circumstances cannot be included in revenue for the purposes of tax."

8. In *C.I.T. v. RUBY RUBBER WORKS LTD.* (178 ITR 181), a Full Bench of the Kerala High Court, presided over by K.S.Paripoornam,J. (as His Lordship then was) held as under:

" There cannot be any dispute that if any amount is paid by the Government with an express purpose benevolent and beneficial in the public interest and the same is received by the appropriate body and it has nothing to do with their trade in the sense of acquiring profits or gains of the trade, certainly it is not income in the hands of the recipient. Similarly, if a subsidy or any amount is paid for a beneficial purpose, such as keeping men in employment or starting an industry in a backward area or electrifying a remote area which could not be undertaken but for the grant, such payment, being of a beneficial character, cannot be taxed as income. In applying this principle, necessarily, we have to examine the nature, character and content of the subsidy given to the assessee."

9. The Supreme Court in *SAHNEY STEEL & PRESS WORKS LTD. v. C.I.T.* (228 ITR 253) has quoted with approval the decision of the Kerala High Court in *C.I.T. v. RUBY RUBBER WORKS LTD.* (178 ITR 181). We are of the view that the ratio of the decision of the Supreme Court does apply as the grant was made under a beneficial and benevolent scheme for the welfare and upliftment of weaker sections of the society and the scheme was framed on benevolent consideration with a view to benefit Adi Dravida community people in securing employment. We hold that the amount received by the assessee has nothing to do with the trade or business of the assessee. It is not a reimbursement of salary; it is not made for the normal working of the mill; it is not made for the benefit of the assessee, but paid with a social objective in mind to achieve a social purpose of providing employment to socially depressed class of people to enable them to get employment with a decent salary affording them some security in life to lead a normal and decent life.

The Appellate Tribunal was therefore correct in holding that the amount received by way of subsidy under the scheme was capital in nature.

10. Accordingly, the question of law referred to us is required to be and is answered in the affirmative, in favour of the assessee and against the Revenue. No costs.

Index: Yes

Website: Yes

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To

1. The Assistant Registrar,
Income-tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai 600 090 (five copies with records)

2. The Secretary,
Central Board of Direct Taxes, New Delhi (3 copies)

3. The Commissioner of Income-tax,
Madurai.

4. The Commissioner of Income-tax (Appeals I), Madurai.

5. The Income-tax Officer, Nagercoil.

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