

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE THIRTIETH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX**

PRESENT

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO**

ITTA.No: 551 OF 2010

Appeal under Section 260A of the Income Tax Act, 1961 aggrieved by the order dated 19-6-2009 passed in ITA.No.346/Hyd/04 on the file of the Income Tax Appellate Tribunal, Hyderabad bench 'A', Hyderabad.

Between:

The Commissioner of Income Tax-III, I.T. Towers, A.C. Guards, Masab Tank, Hyderabad.

...Appellant

AND

M/s. Sanghi Textiles Limited, 4-3-352, Bank Street, Koti, Hyderabad-500 001.

...Respondent

**Counsel for the Appellant: Smt. B. Sapna Reddy
(Senior Standing Counsel for Income Tax Department)**

**Counsel for the Respondent: Sri G.V.Ambeshwar, counsel representing
M/s. MN Advocates**

The Court delivered the following: JUDGMENT

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HYDERABAD**

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

ITTA.No.551 of 2010

Dt.30.01.2026

Between:

The Commissioner of Income Tax-III

.... Appellant

and

M/s Sanghi Textiles Limited

...Respondent

JUDGMENT: *(Per the Hon'ble Sri Justice Suddala Chalapathi Rao)*

The instant Appeal has been filed assailing the order, dt.19.06.2009, passed by the Income Tax Appellate Tribunal, Hyderabad Bench-A, Hyderabad (for short 'the ITAT), in ITA.No.346/Hyd/2004.

2. The brief facts of the case are that, the respondent-assessee *namely* M/s Sanghi Textiles Limited, is an assessee on the rolls of Deputy Commissioner of Income Tax, Central Circle-I, Hyderabad (for short 'the Assessing Authority'). The assessee entered into a Memorandum of Understanding (MoU) and a Lease Agreement,

dt.01.03.1995, with the Assam Government, for taking over and developing a sick paper mill *namely* Ashok Paper Mills (Assam) Ltd. As part of the revival package, the assessee received Rs.4.60 Crores as promoters' contribution from the Assam Government. In addition, the assessee received Rs.2.30 crores towards margin money for working capital and Rs.10.40 crores towards cash loss for the first two years of operation. The entire paper mill along with buildings and external facilities was handed over to the assessee for restarting and running the unit, the appellant/assessee started its operation by reviving the unit.

3. While so, the Assessing Authority passed assessment orders, dt.29.03.2000, by treating the promoters' contribution of Rs.4.60 Crores as a revenue receipt and brought the same to tax for the assessment years 1996-97 and 1997-98.

4. Assailing the said assessment order, the respondent/assessee filed appeal before the Commissioner of Income Tax(Appeals) (for short 'CIT(A)') in ITA.No.2199/CC-1/CIT(A)V(Cent.)/2000-01. The CIT(A) *vide* order dt.19.03.2001, deleted the addition holding that as the said amount was received for revival of a sick unit, it constitutes a capital receipt and not a

revenue receipt and directed the Assessing Authority to treat the same as capital expenditure.

5. Assailing the order of the CIT(A), the appellant/Revenue filed an appeal before the learned ITAT in ITA.No.346/Hyd/2004, and the Tribunal dismissed the said appeal *vide* order, dt.19.06.2009, confirming the orders of the CIT(A). The said order is assailed by the Revenue in the instant appeal.

6. The appeal was admitted to consider the following substantial questions of law:

"Whether the amount of contribution received by the respondent-assessee, which is in the nature of grant/incentive and not referable to any fixed capital, is not liable to tax as revenue receipt and the order of the Tribunal treating the promoters' contribution amount received by the respondent assessee as a capital receipt and not exigible to tax is perverse in law and contrary to the material on record?"

7. We have heard Ms B.Sapna Reddy, learned Senior Standing Counsel for Income Tax Department for appellant-Revenue and Sri G.V.Ambeshwar, learned counsel representing M/s M.N. Advocates for respondent-assessee.

8. The basic contention of the learned Senior Standing Counsel for appellant/Revenue is that, there is no evidence to show that

the amount of Rs.4.60 Crores was received as a loan or as a grant-in-aid earmarked for capital investment and no covenants in the MOU or the agreement showing that the said amounts should be utilized only for capital investment towards purchase of machinery or setting up of new units etc., and also no evidence was placed to show that the said amount was reduced from the cost of the assets, thereby the assessee sought for reimbursement of losses incurred during the first two years of its operation/management. Thus, the learned Senior Standing Counsel, in the backdrop of the above factual matrix, contends that the receipt of Rs.4.60 Crores paid towards running of the company is to be treated as under revenue account and the assessing officer has rightly brought the said amount of Rs.4.60 Crores to tax as revenue expenditure.

9. Learned Senior Standing Counsel also contended that there was no evidence placed by the respondent/assessee to establish that the said amount was used as capital for setting up a new unit, expanding an existing unit, repayment of term loan or creation of capital assets or repairing the buildings or for any other infrastructural developments, and in the absence of such evidence, the only possible inference would be that the amount

was utilized for running the business and is a revenue receipt and as rightly computed by the Assessing Officer.

10. Learned Senior Standing Counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of **Sahney Steel & Press Works Ltd. v. Commissioner of Income Tax**¹ wherein the 'purpose test' was laid down to determine whether the receipt is capital or revenue and held that the time, source and form of subsidy are immaterial and the only important thing is its utilization and if the object is to run the business more profitably, then the receipt would be treated as revenue receipt, and where the purpose is to set up new unit or to expand the existing unit, it would be treated as capital receipt. The said judgment further held that a particular purpose to spend the amount should also be checked to determine the nature of the receipt.

11. Learned Senior Standing Counsel also placed reliance in the case of **Commissioner of Income Tax v. Madras Auto Service (P) Ltd.**² wherein the Hon'ble Supreme Court held that when the asset created belonged to somebody else and the company

¹ 1997(7) SCC 764

² (1998) 99 Taxman 575 (SC)

endured advantage by spending the amount and in such a case, the expenditure has to be looked upon as having been made for the purpose of conducting the business of the assessee more profitably or more successfully, and when the company gains advantage by the spending of the said amount, it should be looked upon as revenue receipt and not capital receipt.

12. Learned Senior Standing Counsel has also placed reliance on the case of **Commissioner of Income Tax v. Ponni Sugars and Chemicals Ltd**³ wherein the Hon'ble Supreme Court has reiterated the principle of 'purpose test' laid down in the case of **Sahney Steel & Press Works Ltd.**'s case(supra) and held that if the subsidy amount is used for repayment of the loans advanced or for setting up of new units, then it would be capital receipt.

13. Learned Standing Counsel by placing reliance on the above said judgments would contend that in the instant case, the amount of Rs.4.60 Crores received by the respondent/assessee from the then Assam Government has been utilized for running the business, as such it would be computed as revenue

³ (2008) 174 Taxman 87 (SC)

expenditure and as such, prayed to set aside the orders of both the learned ITAT and the CIT(A).

14. *Per contra*, the learned counsel appearing for the respondent-assessee submitted that the sum of Rs. 4.60 crores was received by the respondent-assessee as promoters' contribution from the Government of Assam with the specific object of reviving a sick industrial unit that had reached a stage of complete stagnation. It was further contended that the said amount was neither received in the ordinary course of business nor earned as income and it was emphasized that the assessee had undertaken the responsibility of reviving an industrial unit which was virtually in a comatose condition, and it was for this very purpose, the amount of Rs. 4.60 crores was granted to the assessee to enable it to resuscitate and revive the said unit, and the amount was, in fact, utilized for the revival of the industrial unit. Therefore, it is contended that the receipt in question is clearly capital in nature and does not partake the character of income so as to be included in the total income of the assessee. The learned counsel further contended that both the learned ITAT as well as the CIT(A) have correctly appreciated the factual and

legal position in the proper perspective and allowed the appeals, directing the Assessing Officer to delete the addition as revenue and treat it as capital receipt in the assessment orders, and contended that the appeal filed by the appellant/Revenue is devoid of merits and prayed to dismiss the instant appeal.

15. We have given earnest consideration to the rival submissions of learned Senior Standing Counsel for Income Tax Department for appellant/Revenue and learned counsel for respondent/assessee and perused the material on record.

16. From the above factual matrix and the substantial question of law framed, the main issue for determination is:

Whether the receipt of Rs.4.60 Crores by the respondent/assessee is capital receipt or revenue receipt?

17. Though the assessee asserted that the amount of Rs.4.60 Crores, which is allegedly received from the then Government of Assam for revival of the sick unit i.e., respondent/assessee-company, nothing has been placed to show that the said amount has been used for repairs and development of the infrastructural facilities. Neither it was used for setting up of any new units for

revival of the company nor it was spent for any infrastructural facilities and no material was placed on record to substantiate such utilization.

18. In the case of **Sahney Steel & Press Works Ltd's** case(supra), the Hon'ble Supreme Court has laid down the 'purpose test' to determine whether the receipt is capital or revenue receipt. If the 'purpose test' as laid down by the Hon'ble Supreme Court is applied to the facts of the present case, in the absence of evidence to show that the amount of Rs.4.60 Crores received from the then Government of Assam was utilized for setting up new units or to expand the existing unit or to pay the loans advanced to the company for setting up of any new unit. Further the principle in **Sahney Steel & Press Works Ltd's** is fortified in **Madras Auto Service (P) Ltd.'s** case (supra) wherein it was held by the Hon'ble Supreme Court that though the assets belonging to somebody else, the company derived enduring business advantage by expanding the amount and used for the purpose of conducting the business more profitably or more successfully, then the said amount will be revenue receipt and not the capital receipt. The same view was reiterated by the Hon'ble

Supreme Court in **Ponni Sugars and Chemicals Ltd's** case(supra).

19. In such view of the matter, the contentions of the respondent/assessee that the said amount of Rs.4.60 Crores has been used for setting up any unit or utilized for any repair works to facilitate the running of the business or has been used for repairs of the company or for development of infrastructural facilities, in the absence of any material produced in support thereof, cannot hold water, and the said contentions are untenable and hence rejected. Thus, in our considered view, the orders passed by the learned ITAT and the CIT(A) are perverse and are liable to be set aside. Accordingly, the substantial question of law is answered in favour of the appellant/Revenue and against the respondent/assessee.

20. For the aforesaid findings, the appeal is allowed setting aside the orders of the learned ITAT in ITA.No.346/Hyd/2004, dt.19.06.2009, as well as the CIT(A) in ITA.No.2199/CC-1/CIT(A)V(Cent.)/2000-01, dt.19.03.2001, by restoring the assessment order, dt.29.03.2000, passed by the assessing authority. No order as to costs.

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Consequently, miscellaneous petitions, if any, pending shall stand closed.

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SD/-K.SHYLESHI
JOINT REGISTRAR

SECTION OFFICER

One Fair Copy to the HON'BLE SRI JUSTICE P.SAM KOSHY
(For His Lordship's kind Perusal)

One Fair Copy to the HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO
(For His Lordship's kind Perusal)

To

1. The Income Tax Appellate Tribunal, Hyderabad bench 'A', Hyderabad.
2. One CC to Smt. B. Sapna Reddy (SENIOR SC INCOME TAX) [OPUC]
3. One CC to M/s. MN Advocates [OPUC]
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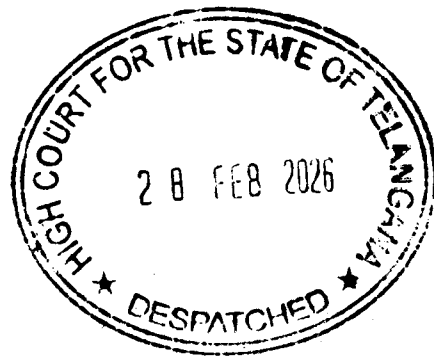


HIGH COURT

DATED:30/01/2026

JUDGMENT

ITTA.No.551 of 2010



ALLOWING THE APPEAL

(22) MT
19/2/26